



Maryland Stadium Authority

**Request for Proposals Testing and Inspection Services
Hagerstown Multi-Use Sports and Events Facility**

Issue Date: September 8, 2022

KEY INFORMATION SUMMARY SHEET

Maryland Stadium Authority

**Request for Proposals
Testing and Inspection Services
Hagerstown Multi-Use Sports and Events Facility**

RFP Issue Date: September 8, 2022

Procurement Officer: Yamillette Waite
Maryland Stadium Authority
351 West Camden Street, Suite 300
Baltimore, Maryland 21201
Telephone: 443-602-0681
E-mail: ywaite@mdstad.com

Procurement Method: Competitive Sealed Proposals

MBE Participation Goal: 10% overall

Pre-Proposal Conference: September 16, 2022 at 11:00 a.m. (Local Time)
Web Conference

Closing Dates and Times
Technical Proposal: September 30, 2022 at 1:00 p.m. (Local Time)

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SECTION 1

GENERAL INFORMATION

1.1 Summary Statement

The Maryland Stadium Authority (“MSA”) is issuing this Request for Proposals (“RFP”) to select a firm to provide testing and inspection services for the Hagerstown Multi-Use Sports and Events Facility (the “Project”). The facility is anticipated to be a state of the art, family-friendly venue with the flexibility to include the hosting of outdoor concerts, festivals, community and family oriented events, in addition to serving as the home field for an Atlantic League Professional Baseball Club.

The project is being designed and built under a guaranteed maximum price via the Design Build method.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations and terms have the meanings indicated below:

- a. Architectural/Engineering (“A/E”) – The Design-Builder’s design team responsible for providing professional engineering, architectural, and design services, on this Project.
- b. Client – Hagerstown/Washington County Industrial Foundation (CHIEF).
- c. COMAR - Code of Maryland Regulations (available at www.dsd.state.md.us).
- d. Consultant - The Offeror selected under the requirements and procedures contained in this RFP.
- e. Contract – The formal, written agreement entered into between MSA and the selected Offeror responding to the RFP. The Contract will include all general MSA terms and conditions and will incorporate the entire RFP, including any amendments or addenda and all or indicated portions of the selected Offeror’s proposal. A sample contract is attached to this solicitation as **Attachment J**.
- f. Design-Builder (“DB”) - The third party engaged by the MSA to provide pre-construction and construction management services.
- g. eMMA - eMaryland Marketplace Advantage (<https://emma.maryland.gov/>).
- h. Local Time – Time in the Eastern Time Zone as observed by the State.

- i. MBE –Minority Business Enterprise certified by the Maryland Department of Transportation (“MDOT”).
- j. MSA – Maryland Stadium Authority (www.mdstad.com)
- k. MSA Business Hours – 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays.
- l. MSA Procurement Policies – MSA procurement policies and procedures (available at www.mdstad.com).
- m. Notice to Proceed (“NTP”) – A formal notification issued by the Procurement Officer that directs the Consultant to perform work and establishes the date on which the work is to commence on a project.
- n. Offeror - An individual or entity, regardless of legal status or organization that submits a Proposal in response to this RFP. The Offeror is the individual or entity that will be executing the Contract with MSA.
- o. Procurement Officer (“PO”) – The MSA representative responsible for this RFP. MSA may change the Procurement Officer at any time and will provide written notice to the Offerors of any such change.
- p. Project – The design and construction of the Hagerstown Multi-Use Sports and Events Facility.
- q. Project Manager (“PM”) - The MSA representative primarily responsible for monitoring the daily activities associated with, and providing technical guidance for, the Project. The Project Manager is the point of contact, post-award, who will assign work and to whom invoices will be submitted. MSA may change the PM at any time by written notice to the Consultant
- r. Project Team – The MSA, the Client, Design-Builder, and any other consultant/entity the MSA may engage to participate in the project.
- s. Proposal - As appropriate, either or both the technical and financial Proposal provided by an Offeror in response to this RFP.
- t. Request for Proposals (“RFP”) - This document announcing the Project and soliciting proposals for the execution of the Project.
- u. Selection Committee- The persons responsible for selecting the successful Offeror.
- v. State - The State of Maryland.

1.3 Contract Type

The contract that results from this RFP will be for a not-to-exceed amount, which will include an Owner's contingency. The Owner's contingency will be used at Owner's sole discretion. The Contract amount shall not be exceeded without the necessary contract modification.

1.4 Contract Duration

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

1.5 Procurement Officer

The sole point-of-contact for purposes of this RFP is the Procurement Officer listed below:

Yamillette Waite
Maryland Stadium Authority
351 West Camden Street, Suite 300
Baltimore, Maryland 21201
Telephone: 443-602-0681
Email: ywaite@mdstad.com

MSA may change the Procurement Officer at any time and will provide written notice to the Offerors if any such change occurs.

1.6 Pre-Proposal Conference

A virtual pre-proposal conference ("Conference") will be held on **September 16, 2022 at 11:00 a.m, Local Time**. Please click on the link below to for details regarding the Conference and to RSVP to the event.

<https://us02web.zoom.us/meeting/register/tZoscuquqjojGtEyAuslnFnP8-d3Vb3-heLu>

1.7 The Project Manager

The Project Manager is:

Cedric Lowe
Maryland Stadium Authority
351 West Camden Street, Suite 300
Baltimore, Maryland 21201

Prior to contract award, MSA may change the Project Manager at any time and will provide written notice to the Offerors. After Contract award, MSA may change the Project Manager at any time by written notice to the Consultant.

1.8 e-Maryland Marketplace Advantage

eMMA is the electronic commerce system for the State of Maryland. In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. You can register at: <https://emma.maryland.gov/>. Click on “New Vendor? Register Now” to begin the process, and follow the prompts.

1.9 Questions

All questions regarding this RFP shall be submitted electronically, in Word or PDF format, via the following upload link no later than **September 19, 2022 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-r62ec762e7c234aa889d3e10714e3a3ea>

Please include information regarding the name of the firm, representative’s name, and contact information. Based on the availability of time to research and communicate an answer, the Procurement Officer will decide whether an answer can be given before the proposal closing date. Answers to all substantive questions that have not previously been answered, and are not clearly specific to the requestor, will be provided via addendum. Responses to any questions, whether responded to verbally or in writing, are not binding unless issued, in writing, via addendum.

1.10 Technical Proposals - Closing Date and Time

To be considered, technical Proposals must be uploaded to the following link no later than **September 30, 2022, 2022 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-ree17937526144a19851135b48a8cbee2>

Requests for an extension of this date and/or time will not be granted. Offerors should allow sufficient electronic transmission time to ensure timely receipt of their proposals. Proposals received by MSA after the deadline will not be considered. Proposals will not be reviewed publicly.

1.11 Oral Presentations

MSA reserves the right to conduct virtual oral presentation. In the event that MSA exercises its right, short-listed Offerors will be required to make virtual oral presentations to the Selection Committee. Significant representations made by an Offeror during their oral presentation must be confirmed in writing. All such representations will become part of the Offeror’s Proposal and are binding if a Contract is awarded as a result of this RFP. If needed, MSA will provide short-listed offerors dates in which oral presentations are to be held. Typically, oral presentations will follow a specified format and generally be limited to 45 minutes [30 minutes for the presentation and 15 minutes for questions]. The Procurement Officer will notify the short-listed Offerors with details and instructions prior to the presentation.

The presentation must consist of, but not be limited to, a discussion of the Offeror's specific approach to the project, understanding of the scope of work, and how it intends to execute the work within schedule and budget.

1.12 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for **180 days** following the closing date for proposals. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.13 Proposal Affidavit

A completed Bid/Proposal Affidavit must accompany the Proposal submitted by an Offeror. A copy of this Affidavit is included as **Attachment A** of this RFP.

1.14 Contract Affidavit

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

1.15 Procurement Method

The Contract resulting from this RFP will be awarded in accordance with the Competitive Sealed Proposals process under Section 3 (C) of MSA's Procurement Policies. MSA's Procurement Policies are available for review on MSA's website at www.mdstad.com or may be obtained by contacting the Procurement Officer.

1.16 Arrearages

By submitting a response to this RFP, an Offeror represents that it is not in arrears in the payment of any obligations due and owing the State of Maryland, including, by way of example only, the payment of taxes and employee benefits, and that it will not become so in arrears during the term of the Contract if selected for contract award.

1.17 Revisions to the RFP

- a. If it becomes necessary to revise this RFP before the closing date for proposals, an addendum/addenda will be posted on eMMA, Gov Delivery, and MSA's website. Addenda issued after the closing date for proposals will be sent only to those Offerors who submitted a responsive and timely proposal, or, if applicable, Offerors that were short-listed to participate in the next phase of the procurement process.

- b. Acknowledgment of the receipt of all addenda to this RFP issued before the proposal closing date must accompany the Offeror's Proposal as identified in Section 4.2.c.1.
- c. Acknowledgement of receipt of addenda to the RFP issued after the proposal closing date shall be in the manner specified in the addendum notice.
- d. Failure to acknowledge receipt of addenda does not relieve the Offeror from complying with all terms of any such document.

1.18 Cancellations; Discussions

MSA reserves the right to cancel this RFP, to accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with any or all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of MSA and the client. This may be followed by submission of Offeror-revised Proposals and best and final offers ("BAFO"). MSA also reserves the right, in its sole discretion, to award a contract based upon written proposals received, without prior discussions or negotiations.

1.19 False Statements

MSA incorporates by reference the provisions of Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland regarding truthfulness in the information included in the contract documents. Offeror shall comply with the obligations set forth therein, including, without limitation, the following:

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

1.20 Minority Business Enterprise

Minority Business Enterprises are encouraged to respond to this solicitation. The Offeror shall submit a completed D-1A form with its technical Proposal. Please refer to the Key Information Summary Sheet of this RFP.

- a. An overall MBE subconsultant participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any.
- b. Notwithstanding any subgoals established for this RFP, the A/E is encouraged to use a diverse group of subconsultants and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
- c. By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subconsultant participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.
- d. An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.20 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in **Attachment D-1B**, Waiver Guidance. **Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its technical Proposal to the RFP will result in the State's rejection of the Offeror's Proposal. This failure is not curable.**
- e. Attachments:
 1. Minority Business Enterprise instructions, and forms are provided in **Attachment D** to assist Offerors.
 2. The Offeror shall include with its technical Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
 - a.) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subconsultants were treated fairly in the solicitation process; and
 - b.) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subconsultant identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
 - c.) An Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

- d.) If the Offeror fails to submit a completed **Attachment D-1A** with the technical Proposal, as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.
3. Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified by the Maryland Department of Transportation and has the correct NAICS codes allowing it to perform the committed work.
4. Within ten (10) business days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer:
- a.) Outreach Efforts Compliance Statement (**Attachment D-2**);
- b.) MBE Subconsultant/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- c.) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subconsultant participation goal or any applicable subgoals.
- d.) Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11. **If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award.** If the contract has already been awarded, the award is voidable.
- f. A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- g. An Offeror that requests a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) business days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

- h. All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Sample Contract – **Attachment J**).
- i. The Offeror is advised that liquidated damages will apply in the event the A/E fails to comply in good faith with the requirements of the MBE program and pertinent Contract.
- j. As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime consultant (including a joint-venture where the MBE firm is a partner), 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 work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

1.21 Incurred Expenses; Economy of Preparation

Neither MSA nor the Client is responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration or in performing any other activities relative to this RFP. Proposals should be prepared simply and economically, providing a straightforward, concise description of how the Offeror proposes to meet the requirements of this RFP.

1.22 Protests/Disputes

Any protest or dispute related to this RFP or a resulting Contract will be subject to Section 10 of MSA's Procurement Policies and Procedures and the relevant provisions of the Contract. MSA's Procurement Policies are available for review on MSA's website at www.mdstad.com or may be obtained by contacting the Procurement Officer.

1.23 Access to Public Records Act Notice

An Offeror should give specific attention to the clear identification of those portions of the Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide written justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the technical Proposal and if applicable, separately in the financial Proposal. Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information may be disclosed.

1.24 Offeror Responsibilities

The Offeror shall be responsible for all products and services required by this RFP. Subconsultants must be identified, and a complete description of their roles relative to the Proposal must be included in the Proposal. The Offeror retains responsibility for all work to be performed by and any deliverable submitted by a subconsultant. If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.25 Patents, Copyrights, and Intellectual Property

a) If the Consultant furnishes any design, device, material, process or other item that is covered by a patent or copyright or that is proprietary to or a trade secret of another, it shall obtain the necessary permission or license to permit MSA and/or the client to use such item.

b) The Consultant will defend or settle, at its own expense, any claim or suit against MSA and/or the client alleging that any such item furnished by the Consultant infringes any patent, trademark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, copyright or trade secret, the Consultant will defend MSA and/or the client against that claim at the Consultant's expense and will pay all damages, costs, and attorney's fees that a court finally awards, provided MSA and/or the client: (i) promptly notifies the Consultant in writing of the claim; and (ii) allows the Consultant to control and cooperates with the Consultant in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in the next paragraph.

c) If any products furnished by the Consultant become, or in the Consultant's opinion are likely to become, the subject of a claim of infringement, the Consultant will, at its option and expense: (i) procure for MSA and/or the client the right to continue using the applicable item; (ii) replace the product with a non-infringing product substantially complying with the item's specifications; or (iii) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

1.26 Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of a contract succeeding the first fiscal period, the contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect the rights of the Consultant, MSA, and the client under any termination clause in the contract. The effect of termination of the contract hereunder will be to discharge the Consultant, MSA, and the client from future performance of the

contract, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the contract. MSA and/or the client shall notify the Consultant as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

1.27 Financial Disclosure

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

1.28 Non-Exclusive Use

Neither this RFP nor any resulting Contract shall be construed to require MSA or the client to use any Offeror or exclusively use the Consultant for the services described in this RFP. MSA and the client reserve the right to obtain services of any nature from other sources when it is in the best interest of MSA and the client to do so and without notice to any party. MSA and the client make no guarantees that it will purchase any products or services from the Consultant resulting from this RFP.

1.29 Sustainability Policies

MSA is committed to procuring all supplies, services, maintenance, construction, and architect-engineer services in a manner consistent with the promotion of sound environmental practices.

1.30 Payments by Electronic Fund Transfer

By submitting a response to this RFP, the Offeror agrees to accept payments by electronic funds transfer (EFT). A form will be provided to the selected Offeror.

1.31 Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party to a Contract resulting from this RFP (including without limitation any information or data stored within the Consultant's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under the Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that

(a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of the Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third-party lawfully in possession thereof and legally permitted to further disclose the information; or (e) such party is required to disclose by law.

1.32 Loss of Data

In the event of loss of any MSA and/or client data or records where such loss is due to the intentional act or omission or negligence of the Consultant or any of its subconsultants or agents, the Consultant shall be responsible for recreating such lost data in the manner and on the schedule set by the Project Manager. The Consultant shall ensure that all data is backed up and recoverable by the Consultant.

1.33 Non-Hiring of Employees

No official or employee of the State, as defined in State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this procurement, shall, during the pendency and term of a resulting Contract, and while serving as an official or employee of the State, become or be an employee of the Consultant or any entity that is a subconsultant on said Contract.

1.34 Nondiscrimination in Employment

The Consultant 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, sexual orientation, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post, and to cause subconsultants to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

1.35 Contingent Fee Prohibition

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

1.36 Political Contribution Disclosure

The Consultant shall comply with Election Law Article, §§14-101 to 14-108, Annotated

Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

1.37 Verification of Registration and Tax Payment

Before a corporation can do business in the State, it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the Proposal Closing date and time. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for contract award under this RFP.

Prior to contract award under this RFP, the selected firm, including the joint ventures, must provide a Certificate of Good Standing from the Maryland State Department of Assessments and Taxation.

1.38 MBE and Prevailing Wage Compliance System

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

1.39 Use of GovDelivery Platform

Offerors agree to receive this procurement and other documentation associated with this procurement through GovDelivery and to update any security settings to ensure delivery. Proposals shall be uploaded via the upload link to Share File provided in Section 1.10 of this RFP.

1.40 Maryland Law

This RFP and any subsequent addenda or Contracts shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

1.41 Acceptance of Terms and Conditions

By submitting a Proposal, the Offeror accepts all of the terms and conditions set forth in this RFP including all attachments. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the technical Proposal. All exceptions will be taken into consideration when evaluating the Offeror's Proposal. MSA reserves the right to accept or reject any exceptions.

1.42 Procurement Regulations

The RFP and any Agreements entered into as a result hereof is not subject to the provisions of Division II of the State Finance and Procurement Article of the Maryland Annotated Code (the "Procurement Article") except as set forth in MSA's procurement policies available online at www.mdstad.com.

1.43 Multiple Proposals

MSA will not accept multiple or alternate proposals from a single Offeror.

SECTION 2

OFFEROR'S QUALIFICATIONS

2.1 Minimum Qualifications

The Offeror's proposal should clearly and accurately demonstrate specialized knowledge and experience required for consideration for materials testing and inspection services, as required throughout this section, as well as with the requirements for testing and inspections set forth in the Design Development Documents (**Attachment F**).

Proposals should provide straightforward, concise information that satisfies the requirements specified in this RFP. Offerors should cross-reference each minimum qualification requirement, with the location in the submission (section or page number) where the Offeror has demonstrated/documentated that it meets the minimum qualification.

The Offeror shall be able to provide testing and inspection services in accordance with the applicable codes and practices, including, without limitation, the 2018 International Building Code, the City of Hagerstown Code, American Council of Independent Laboratories, and as specified in the applicable Project construction documents.

At a minimum the Offeror shall meet the following qualifications to be considered for award:

- a) Has been in business for at least 5 years;
- b) Is a firm licensed to operate in the State of Maryland;
- c) Has experience providing testing and inspection services including, but not limited to, the following:
 - Earthwork/soils
 - Asphalt
 - Erosion and Sediment Control
 - Concrete
 - Masonry
 - Steel
 - Roofing
 - Fireproofing/Fire Resistant Materials
 - Roofing
 - Waterproofing
 - Windows
 - Painting
- d) Where manufacturer certifications are required to perform testing or inspections, Offeror shall possess certifications for the basis of design manufacturer (at a

minimum),

- e) Offeror shall meet the insurance requirements stated in the Sample Contract, (**Attachment J**); and,
- f) Preferred Qualification - Offeror's substantial experience with large, multi-use and/or sports facilities.

SECTION 3

PURPOSE AND SCOPE OF WORK

3.1 Purpose

The MSA is issuing this RFP to contract with a qualified Testing and Inspection Firm(s) to provide testing and inspection services related to the Hagerstown Multi-Use Sports and Events Facility in Hagerstown, MD.

The Offeror(s) will contract directly with the MSA but will be required to work in close coordination with the Design Builder (DB). The Design Builder is comprised of the Turner Construction Company and Pendulum.

3.2 Scope of Services

As part of the requirements outlined in the construction documents and project specifications (**Attachment F**), the scope of testing, inspection, and lab services may include, but is not limited to, the following:

a.) Earthwork/soils:

- Soil density and compaction, soil bearing capacity, suitability of soils, asphalt compaction, etc.

b.) Environmental Conditions:

- Erosion and sediment control compliance with MDE requirements

c.) Concrete:

- Compressive strength, slump, forming, reinforcing, moisture testing, floor flatness, etc. Special inspections in accordance with S-003 and S-004

d.) Masonry:

- Mortar, grout strength, cast stone, etc.

e.) Steel:

- Visual inspections (connection, steel and welding materials, bolted and welded connections, painting, etc.), specialized weld testing (magnetic particle, ultrasonic, liquid penetration, radiographic shear stud bond), compliance with erection plans, bearing plates, nelson studs, decking, cold formed metal framing, etc. Special inspections in accordance with S-003 and S-004

f.) Roofing

- Electronic leak detection of new roof prior to substantial completion, green roof, and manufacturer certified third party inspections, etc.

g.) Fireproofing/Fire Resistant Materials:

- Intumescent paint, spray applied fireproofing, firestopping, etc.

h.) Waterproofing and Air Barriers

- Inspect surface prep, application, flashing, protection, drainage components. Preconstruction testing and inspection of mockup for air barrier

i.) Windows

- Perform air leakage, water resistance testing, structural adhesion testing, etc.

j.) Painting:

- Pre-installation testing of interior and exterior paint material

Further, the scope shall include the following performance requirements:

- The Consultant(s) shall provide qualified personnel to construction site, as required, upon 24-hour notice.
- The Consultant(s) shall attend necessary onsite pre-installation and construction meetings as required by the MSA and the DB.
- The Consultant(s) shall coordinate sequence of inspections with MSA and Construction Manager as to not delay the construction schedule. Inspections shall be coordinated and performed so the necessity of removing and replacing construction to accommodate testing & inspections is avoided entirely.
- The Consultant(s) shall perform specified inspections, sampling, and testing of materials as required by the specifications for this Project.
- The Consultant(s) shall prepare lists of uncompleted work, non-conformance reports, and deficiencies notices. Reports shall be submitted to MSA and the DB simultaneously within (1) day of site visit and/or completion of lab testing.
- The Consultant(s) shall supply all field personnel with a direct means of communication and reporting protocols with their office and with the DB/MSA.
- The Consultant(s) shall be responsible for providing, storing, and protecting their own tools, materials, and equipment. This includes the provisions for concrete cylinder cure boxes.

- The Consultant(s) shall comply with the DB's safety plan

A copy of the Design Development Documents have been included in **Attachment F**.

Work on this Contract will start as early as September 2022. Consultant's work will be managed and coordinated directly by the DB for this Project. The current estimate of the specific tests and estimated man hours is included in the Pricing Form (**Attachment H**).

3.3 Schedule - CPM

A preliminary schedule outlining the current project timeline is attached (**Attachment I**)

SECTION 4

PROPOSAL SUBMISSION AND REQUIREMENTS

4.1 Solicitation Process

The solicitation will follow a multi-step process to select the successful Offeror.

a. Step 1– Submission of technical Proposals

Offerors will submit a technical Proposal in accordance with Sections 4.2 and 4.3 to demonstrate their experience (including meeting the minimum requirements and ability to execute the Project successfully). Upon receipt of the technical Proposals, proposals will be reviewed and those deemed responsible and reasonably susceptible of being selected for award will be reviewed by the Selection Committee. Offerors must respond to all requirements of the RFP. Offerors that fail to do so will be deemed not reasonably susceptible of being selected for award.

b. Step 2 – Review of technical Proposals

The Selection Committee will review technical Proposals and rank the Proposals according to technical merit. Based on their achieved technical rankings, selected Offerors will be “short-listed” to participate in the oral presentation phase of the procurement, if needed.

c. Step 3 – Short-list and Oral Presentations

If needed, Short-listed Offerors will be asked to attend an oral presentation. Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

d. Step 4 – Short-list and Submission of Financial Proposals

After Oral Presentations, if needed, and based on achieved ranking, the Selection Committee will select which short-listed firms will be requested to submit a financial proposal. Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

e. Step 5 – Recommendation for Award

The Offeror deemed to provide the most advantageous offer (technical and financial) to the Project by the Selection Committee will be recommended for award. See section 5 of the RFP.

4.2 Submission – General Requirements

Offerors shall submit proposals labeled “**Request for Proposals – Testing &**

Inspection Services Hagerstown Multi-Use Sports and Events Facility” and labeled either **Volume I - Technical Proposal** or **Volume II – Financial Proposal.**” All pages of each proposal volume must be consecutively numbered from beginning (Page 1) to end (Page “x”). The final page shall state “Final Page.”

The electronic submissions (formatted as .pdf file) shall include the firm’s name in the file name and shall be formatted so each page can be legibly printed in 8 1/2” x 11” format.

4.3 Volume I – Technical Proposal

This section provides specific instructions for submission of the Offeror’s technical Proposal. Technical proposals shall be uploaded electronically to the link provided in Section 1.10 of the RFP. The technical Proposal shall follow the format provided below.

1. Transmittal Letter

A transmittal letter must accompany the technical Proposal. The purpose of this letter is to transmit the proposal to the Procurement Officer. The transmittal letter should be brief, and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.

2. Title and Table of Contents

The technical Proposal shall begin with a title page bearing the name and address of the Offeror, point of contact information (including phone number and e-mail address) for two (2) people, and the name of this RFP. A table of contents for the Proposal should follow the title page.

Information that is claimed to be confidential shall be clearly identified. **Unless there is a compelling case, an entire proposal should not be labeled confidential;** only those portions that can reasonably be shown to be proprietary or confidential should be so labeled.

3. Executive Summary

The Offeror shall condense and highlight the contents of the technical Proposal in a separate section titled “Executive Summary”. The summary shall:

- a. Acknowledge the receipt of any amendments or addenda associated with this RFP;
- b. Provide the Offeror’s tax identification number;
- c. Identify any joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of a Contract. Upon MSA’s request, Offerors shall make available within 24 hours the joint venture scope of work documents and/or agreement;

- d. Cross reference each minimum qualification requirement, identified in Section 2 of the RFP, with the location in the submission (section or page number) where the Offeror has demonstrated or documented that it meets the requirement; and
- e. List any exceptions the Offeror has taken to the requirements of this RFP, the sample Contract, or any other exhibits or attachments. If an Offeror takes no exception, the Executive Summary should so state.

Warning: Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible for award.

4. Experience and Qualifications (Tab 1)

The Offeror shall provide an overview of the Offeror's experience in providing testing & inspection services, including the number of years. Offerors must include the Experience Form (**Attachment K**).

- a. Information regarding the Offeror's experience and capabilities, including sample projects and an overview of the Offeror's experience providing testing and inspection services for the sample projects (project name, location, dates and contract value).
- b. The Offeror's proposal shall clearly and accurately demonstrate the specialized knowledge and experience required for consideration for materials testing and inspection services.
- c. The Offeror shall demonstrate the ability to provide testing and inspection services in accordance with the applicable codes and practices, including, without limitation, the 2018 International Building Code, the City of Hagerstown Code, American Council of Independent Laboratories, and as specified in the applicable Project construction documents.
- d. Three (3) references of current or previous projects (within the last three years) of relevance to the proposed scope of work must be included on the Corporate Profile (**Attachment E**).

Note: During proposal evaluation, MSA reserves the right to require that the Offeror provide a copy of its most current Annual Report or audited Statement of Financial Condition to include a Balance Sheet, Income Statement and Cash Flow Statement or other acceptable financial information. These documents may be relied upon in any determination regarding the Offeror's financial responsibility.

5. Work Plan

Section 2 and Section 3 outline the desired requirements of this solicitation. At a minimum, Offerors shall address the following:

- a. The Offeror shall demonstrate how it intends to complete the scope of work outlined in the RFP.
- b. The names, titles, and resumes of key management personnel (staffing plan) directly involved with managing the work that will be required under the Contract.
- c. Offerors shall identify any known subconsultants and/or joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of the Contract. Upon MSA's request, Offerors shall make available within 24 hours all Subcontractor/Joint venture scope of work documents and proposals.

6. Required Submissions

Offerors must submit the following items in the technical Proposal:

- a. A completed Bid/Proposal Affidavit (**Attachment A**);
- b. A completed Conflict of Interest Information/Affidavit and Disclosure (**Attachment B**);
- c. Capacity Summary Sheet for Key Management and Personnel (**Attachment G**);
- d. Corporate Profile (**Attachment E**); and
- e. Certificates of Insurance with the limits and coverage required in the Sample Contract (**Attachment J**).

4.4 Volume II - Financial Proposal

Information about the due date and submission instructions will be included in the notification to the selected short-listed Offerors as set forth in Section 4.1. A sample copy of the Pricing Form is attached hereto as **Attachment H**.

- a. The Pricing Form shall contain all price information in the format specified in **Attachment H**. The Offeror shall complete the Pricing Form only as provided in the financial Proposal Instructions and the Pricing Form itself. Do not amend, alter, or leave blank any items on the Pricing Form or include additional clarifying or contingent language on or attached to the Pricing Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably

susceptible of being selected for award and rejected by MSA

Note: MSA reserves the right to require, during proposal evaluation, that the Offeror provide a copy of its most current Annual Report or audited Statement of Financial Condition to include a Balance Sheet, Income Statement and Cash Flow Statement or other acceptable financial information. These documents may be relied upon in any selection determination.

SECTION 5

EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

Evaluation of the Proposals will be performed by the Selection Committee and will be based on the criteria set forth below. Technical criteria shall be given more weight than financial criteria.

5.2 Technical Criteria

Criteria used to rate the technical Proposal includes, without limitation, the following:

- a) Adequacy of the Work Plan to provide the proposed services.
- b) Experience and qualifications of the Offeror and its key management personnel (staffing plan), with specific emphasis on similar projects.
- c) Past Performance and References for the Offeror.
- d) Quality of Submission.

5.3 Financial Criteria

Short-listed Offerors that participate in the financial Proposal phase and are deemed as meeting all of the requirements will be ranked (most advantageous to least advantageous) based on an analysis of the information provided in the financial Proposal submission.

5.4 Reciprocal Preference

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

- a. The Maryland resident business is a responsible Offeror;
- b. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- c. The other state gives a preference to its resident businesses through law, policy, or practice; and
- d. The preference does not conflict with a federal law or grant affecting the procurement Contract. “

5.5 General Selection Process

- a) The Contract will be awarded in accordance with the competitive sealed proposals process under Section 3(C) of MSA's Procurement Policies.
- b) Prior to award of a contract pursuant to this RFP, MSA may require any or all Offerors to submit such additional information bearing upon the Offeror's ability to perform the contract as MSA may deem appropriate. MSA may also consider any information otherwise available concerning the financial, technical and other qualifications or abilities of the Offeror.
- c) MSA may hold discussions with any or all Offerors judged reasonably susceptible of being selected for award, or potentially so. MSA also reserves the right to develop a short-list of Offerors deemed most qualified based upon their technical Proposals and conduct discussions with only the short-listed Offerors. However, MSA also reserves the right to make an award without holding discussions. Whether or not discussions are held, MSA may determine an Offeror to be not responsible or not reasonably susceptible of being selected for award, in its sole and absolute discretion, at any time after the initial closing date for receipt of proposals and the review of those proposals.

5.6 Award Determination

Upon completion of all evaluations, discussions and negotiations, and reference checks, the Procurement Officer will recommend award of the contract to the responsible Offeror(s) whose proposal is determined to be the most advantageous considering technical evaluation factors and price factors as set forth in this RFP. The award is subject to approval by the MSA Board of Directors.

5.7 Contracts

The Contract will be held by MSA.

ATTACHMENTS

All attachments can be downloaded via the following Sharefile link:

<https://mdstad.sharefile.com/d-s84e0e96d3bfb4aa8b1100091db5bofcd>

- A. BID/PROPOSAL AFFIDAVIT**
- B. CONFLICT OF INTEREST AFFIDAVIT/DISCLOSURE**
- C. CONTRACT AFFIDAVIT**
- D. MBE INSTRUCTIONS AND FORMS**
- E. CORPORATE PROFILE**
- F. DESIGN DEVELOPMENT DOCUMENTS**
- G. CAPACITY SUMMARY SHEET**
- H. PRICING FORM (to be issued via addendum)**
- I. PROJECT SCHEDULE**
- J. SAMPLE CONTRACT**
- K. EXPERIENCE FORM**

Attachment A
Bid/Proposal Affidavit

Attachment A. 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):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)— (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
 - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
 - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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

I FURTHER AFFIRM THAT:

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

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

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

N. I FURTHER AFFIRM THAT:

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

O. ACKNOWLEDGEMENT

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

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

By:

Signature of Authorized Representative and Affiant

Printed Name:

Printed Name of Authorized Representative and Affiant

Title:

Title

Date:

Date

Attachment B

Conflict of Interest Affidavit/Disclosure

Attachment B. 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 Offeror, Contractor, consultant, or subcontractor or sub-consultant 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 Proposal is made.

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

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

Date: _____ By: _____

(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment C
Contract Affidavit

Contract Affidavit

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: _____

Address: _____

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

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of

\$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

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 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.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)
 _____ (signature of Authorized Representative and Affiant)

Attachment D
MBE Instruction and Forms

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
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 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 Testing and Inspection Services - Hagerstown Multi-Use Sports and Events Facility, I affirm the following:

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

I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of 10% percent:

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

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
	Testing and Inspection - Hagerstown	

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</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>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</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>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.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (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>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</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>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.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___ %</p> <p>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). Total percentage of Supplies/Products ___% X 60% = ___ %</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (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>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</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>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.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___ %</p> <p>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). Total percentage of Supplies/Products ___% X 60% = ___ %</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (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>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</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>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.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>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). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (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>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</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>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.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>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). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker ___%</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 __

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

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 __

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

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 __

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

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 __

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

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):

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

D-3A
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: _____

D-4A
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
List all payments made to MBE subcontractor named above during this reporting period:		List dates and amounts of any outstanding invoices:	
	Invoice #	Amount	
	Invoice #	Amount	
1.			1.
2.			2.
3.			3.
4.			4.
Total Dollars Paid: \$		Total Dollars Unpaid: \$	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor Name

Address

Email

Signature (Required)

Contracting Unit

City, State Zip

Phone Number

Date

D-4B
Minority Business Enterprise Participation
MBE Prime Contractor Report

MBE Prime Contractor:	Contract #:
Certification Number:	Contracting Unit:
Report #:	Contract Amount:
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:
MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Project Begin Date:
	Project End Date:

Contact Person:			
Address:			
City:		State:	
Phone:		FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor Name	Contracting Unit
Address	City, State Zip
Email	Phone Number
Signature (Required)	Date

D-5
Minority Business Enterprise Participation
MBE Subcontractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Report is due by the 10th of the month following the month the services were performed.	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
Subcontractor Services Provided:					
List all payments received from Prime Contractor during reporting period indicated above.			List dates and amounts of any unpaid invoices over 30 days old.		
	Invoice Amount	Date		Invoice Amount	Date
1.			1.		
2.			2.		
3.			3.		
4.			4.		
Total Dollars Paid: \$			Total Dollars Unpaid: \$		
Prime Contractor:			Contract Person:		

Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):

_____	_____
Contract Monitor Name	Contracting Unit
_____	_____
Address	City, State Zip
_____	_____
Email	Phone Number
_____	_____
Signature (Required)	Date

Attachment E
Corporate Profile

Consultant Corporate Profile

Firm Contact Information

Firm Name: _____

Federal ID Number: _____

Point of Contact: _____ Phone Number: _____

Regional Office Address: _____

Firm Background Information

Year Firm Founded: _____

Is the firm MDOT MBE Certified? Yes/No

If certified, provide the certification number and minority status.

Primary Business / Service Provided: _____

Number of Years Performing Services: _____

Number Full Time Employees (Corporate / Regional Office): _____ / _____

Provide a brief narrative outlining the firm's history.

Provide a brief narrative outlining what services the firm intends to self-perform.

Provide a brief narrative outlining what services the firm intends to subcontract to others.

Provide a brief narrative outlining the firm's familiarity with standards, laws and conditions as they apply to the work to be performed under this project.

Provide a brief narrative clarifying the firm's capacity to perform services as outlined in the RFP.

Provide sales volume and project completion data for the most recently completed three-year period. Note that information provided is to be for the regional / local office that would be responsible for completing work under this solicitation.

Volume	Annual Sales	Completed Projects	Largest Project
2018	_____	_____	_____
2019	_____	_____	_____
2020	_____	_____	_____
2021	_____	_____	_____

Firm References

Provide three (3) references. Note that references are to be from different projects; that is, only one reference per project is allowed. MSA staff members cannot be considered as a firm's reference.

Project Name: _____

Name: _____

Title: _____

Company Name: _____

Phone Number and email: _____

Project Relationship: _____

Project Name: _____

Name: _____

Title: _____

Company Name: _____

Phone Number and email: _____

Project Relationship: _____

Project Name: _____

Name: _____

Title: _____

Company Name: _____

Phone Number and email: _____

Project Relationship: _____

CONFIDENTIAL

Disclosure of Contract Issues; Litigation; Criminal Investigations

In the last five years, list and discuss any alleged prior or ongoing contract failures (potential judgment/settlement in excess of \$100,000), contract breaches (potential judgment/settlement in excess of \$100,000), other significant civil litigation, and all criminal litigation or investigations, which involved your firm.

Failure to Complete

In the last five (5) years, disclose any projects that your firm was involved with that were not completed.

Insurance

Include current certificates of insurance showing the limits of liability maintained by your firm in each of the following categories: workers' compensation, employer's liability, commercial general liability, automobile liability, umbrella or excess liability, and property insurance.

CONFIDENTIAL

Prepared By:

Name: _____

Title: _____

Signature: _____

Date: _____

CONFIDENTIAL

Attachment F

Design Development Documents

Please click on the Share File link below to access the documents:

<https://mdstad.sharefile.com/d-s856333b9da894c8d9571478086ae5693>

- Design Development Drawings
- Design Development Specifications
- Geotechnical Report

Attachment G
Capacity Summary Sheet

Attachment H
Pricing Form
(To be issued via addendum)

Attachment I
Project Schedule

#	Activity ID	Activity Name	OD	Start	Finish	Total Float	Lag	2021												2022												2023											
								J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
1	Hagerstown Municipal Stadium Proposal_20220709 GMP-1		541	09-Mar-22 A	23-Apr-24	0																																					
2	Project Milestones		532	09-Mar-22 A	23-Apr-24	0																																					
3	Design and Preconstruction Milestones		240	09-Mar-22 A	23-Feb-23	292																																					
4	MLST-1000	Project Award - Design & Pre-Construction Services NTP	0	09-Mar-22 A																																							
5	MLST-1001	Approval of SD & Cost Estimate	0		10-Jun-22 A																																						
6	MLST-1005	Obtain Building Demolition Permit	0		19-Aug-22	416																																					
7	MLST-1002	Approval of DD & Cost Estimate	0		13-Sep-22	14																																					
8	MLST-1003	Approval of 70% Construction Document & Cost Estimate	0		23-Nov-22	1																																					
9	MLST-1006	Obtain Building Permit	0		23-Dec-22	332																																					
10	MLST-1004	Approval of GMP on 70% CDs	0		08-Feb-23	1																																					
11	MLST-1028	NTP for New Construction	0	09-Feb-23		302																																					
12	MLST-1038	Approval of 100% CDs	0		23-Feb-23	272																																					
13	Construction Milestones		426	08-Aug-22	23-Apr-24	0																																					
14	MLST-1008	Mobilize Onsite for Enabling Work	0	08-Aug-22		10																																					
15	MLST-1009	Completion of Demolition, Site Grading	0		12-Dec-22	10																																					
16	MLST-1010	Completion of Foundations	0		07-Apr-23	261																																					
17	MLST-1011	Completion of Structural Steel Erection	0		25-Jul-23	40																																					
18	MLST-1012	Building Dry-In	0		27-Sep-23	26																																					
19	MLST-1013	Final Building System TAB	0		12-Jan-24	40																																					
20	MLST-1014	Completion of Start-Up & Commissioning	0		29-Jan-24	30																																					
21	MLST-1015	Final Inspections Complete	0		05-Mar-24	5																																					
22	MLST-1016	Certificate of Occupancy	0		12-Mar-24	0																																					
23	MLST-1017	Project Substantial Completion	0		12-Mar-24	30																																					
24	MLST-1018	Post Construction Phase Complete	0		23-Apr-24	0																																					
25	Design Phase & GMP Development		275	09-Mar-22 A	06-Apr-23	266																																					
26	Schematic Design (SD) Phase		126	09-Mar-22 A	05-Aug-22	11																																					
27	SD-1000	SD - Kick-Off Meeting with MSA	5	09-Mar-22 A	15-Mar-22 A																																						
28	SD-1001	SD - Document Development by Design/Build Team	25	09-Mar-22 A	12-May-22 A																																						
29	SD-1003	SD - Submit Cost Estimate to MSA	10	13-Apr-22 A	12-May-22 A																																						
30	SD-1004	SD - Submit VE Study Constructability Report to MSA	10	13-Apr-22 A	12-May-22 A																																						
31	SD-1005	MSA Review & Approval of SD & Cost Estimate	10	27-Apr-22 A	10-Jun-22 A																																						
32	SD-1002	SD - Submit to MSA	0		12-May-22 A																																						
33	SD-1006	Perform Historic Viewshed Analysis	40	10-Jun-22 A	05-Aug-22	11																																					
34	Design Development (DD) Phase		121	13-Apr-22 A	13-Sep-22	400																																					
35	DD-1002	DD - Document Development by Design/Build Team	50	13-Apr-22 A	15-Aug-22	1																																					
36	DD-1000	MSA Issue Design Development - NTP	0	10-Jun-22 A																																							
37	DD-1001	DD - Kick-Off Meeting with MSA	5	10-Jun-22 A	16-Jun-22 A																																						
38	DD-1007	Submit initial Quality Control Program to MSA	30	10-Jun-22 A	19-Aug-22	65																																					
39	DD-1008	Submit Initial Site Utilization & Logistics Plan to MSA	30	10-Jun-22 A	19-Aug-22	30																																					
40	DD-1009	Submit Life Cycle, Bldg Energy Efficiency & Sustainability Report to MSA	30	10-Jun-22 A	19-Aug-22	1																																					
41	DD-1010	Submit Hagerstown Cultural Trail Relocation to MSA/Client/COH	5	15-Jun-22 A	15-Jun-22 A																																						
42	DD-1003	DD - Submit to MSA	0		15-Aug-22	5																																					

█ Remaining Level of Effort █ Critical Remaining Work
█ Actual Level of Effort ◆ Milestone
█ Actual Level of Effort
█ Actual Work
█ Remaining Work

Hagerstown Municipal Stadium Proposal_20220709 GMP-1



Start Date 09-Mar-22
 Finish Date 23-Apr-24
 Data Date 09-Jul-22

#	Activity ID	Activity Name	OD	Start	Finish	Total Float	Lag	2021												2022												2023											
								J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
123	Engineering, Coordination, & Fabrication		274	22-Aug-22	26-Sep-23	52		[Gantt bars for 2021-2023]																																			
124	BIM Coordination		60	11-Jan-23	06-Apr-23	71		[Gantt bars for 2021-2023]																																			
125	M-1030	BIM MEPS Coordination - Under Slab	40	11-Jan-23	09-Mar-23	71		[Gantt bars for 2021-2023]																																			
126	M-1080	BIM MEPS Coordination - Above Slab	40	09-Feb-23	06-Apr-23	71		[Gantt bars for 2021-2023]																																			
127	Site Utilities		70	22-Aug-22	05-Dec-22	55		[Gantt bars for 2021-2023]																																			
128	M-1000	Site Utilities Submittals, Review, Approval	40	22-Aug-22	18-Oct-22	55		[Gantt bars for 2021-2023]																																			
129	M-1010	Site Utilities Fab & Deliver	30	19-Oct-22	05-Dec-22	55		[Gantt bars for 2021-2023]																																			
130	Elevator		160	11-Jan-23	28-Aug-23	72		[Gantt bars for 2021-2023]																																			
131	M-1040	Elevators Submittals, Review, Approval	40	11-Jan-23	09-Mar-23	72		[Gantt bars for 2021-2023]																																			
132	M-1150	Elevator Fab & Deliver	120	10-Mar-23	28-Aug-23	72		[Gantt bars for 2021-2023]																																			
133	HVAC Equipment		140	11-Jan-23	31-Jul-23	21		[Gantt bars for 2021-2023]																																			
134	M-1050	HVAC Equipment Submittals, Review, Approval	40	11-Jan-23	09-Mar-23	21		[Gantt bars for 2021-2023]																																			
135	M-1160	HVAC Equipment Fab & Deliver	100	10-Mar-23	31-Jul-23	21		[Gantt bars for 2021-2023]																																			
136	Electrical Equipment		140	11-Jan-23	31-Jul-23	21		[Gantt bars for 2021-2023]																																			
137	M-1060	Electrical Equipment Submittals, Review, Approval	40	11-Jan-23	09-Mar-23	21		[Gantt bars for 2021-2023]																																			
138	M-1170	Electrical Equipment Fab & Deliver	100	10-Mar-23	31-Jul-23	21		[Gantt bars for 2021-2023]																																			
139	Concrete		50	23-Nov-22	07-Feb-23	2		[Gantt bars for 2021-2023]																																			
140	M-1020	Concrete Submittals, Review, Approval	40	23-Nov-22	24-Jan-23	2		[Gantt bars for 2021-2023]																																			
141	M-1090	Concrete Fab & Deliver	20	10-Jan-23	07-Feb-23	2		[Gantt bars for 2021-2023]																																			
142	Structural Steel		130	23-Nov-22	01-Jun-23	1		[Gantt bars for 2021-2023]																																			
143	M-1070	Structural Steel Submittals, Review, Approval	50	23-Nov-22	07-Feb-23	1		[Gantt bars for 2021-2023]																																			
144	M-1190	Structural Steel Fab & Deliver	80	08-Feb-23	01-Jun-23	1		[Gantt bars for 2021-2023]																																			
145	Misc. Metals		70	11-Jan-23	20-Apr-23	31		[Gantt bars for 2021-2023]																																			
146	M-1100	Misc Metals Submittals, Review, Approval	30	11-Jan-23	23-Feb-23	31		[Gantt bars for 2021-2023]																																			
147	M-1200	Misc Metals Fab & Deliver	40	24-Feb-23	20-Apr-23	31		[Gantt bars for 2021-2023]																																			
148	Glazing/ Storefront / Doors		120	11-Jan-23	30-Jun-23	21		[Gantt bars for 2021-2023]																																			
149	M-1110	Glazing/Storefront/Doors Submittals, Review, Approval	40	11-Jan-23	09-Mar-23	21		[Gantt bars for 2021-2023]																																			
150	M-1220	Glazing/Storefront/Doors Fab & Deliver	80	10-Mar-23	30-Jun-23	21		[Gantt bars for 2021-2023]																																			
151	Metal Panels		80	10-Mar-23	30-Jun-23	21		[Gantt bars for 2021-2023]																																			
152	M-1120	Metal Panels Submittals, Review, Approval	30	10-Mar-23	20-Apr-23	21		[Gantt bars for 2021-2023]																																			
153	M-1210	Metal Panels Fab & Deliver	50	21-Apr-23	30-Jun-23	21		[Gantt bars for 2021-2023]																																			
154	Metal Stud Framing		80	10-Mar-23	30-Jun-23	16		[Gantt bars for 2021-2023]																																			
155	M-1130	Metal Stud Framing Submittals, Review, Approval	40	10-Mar-23	04-May-23	16		[Gantt bars for 2021-2023]																																			
156	M-1230	Metal Stud Material Procurement	40	05-May-23	30-Jun-23	16		[Gantt bars for 2021-2023]																																			
157	Roofing		120	10-Mar-23	28-Aug-23	27		[Gantt bars for 2021-2023]																																			
158	M-1140	Roofing Submittals, Review, Approval	40	10-Mar-23	04-May-23	27		[Gantt bars for 2021-2023]																																			
159	M-1240	Roofing Material Procurement	80	05-May-23	28-Aug-23	27		[Gantt bars for 2021-2023]																																			
160	Stadium Equip & Seating		140	10-Mar-23	26-Sep-23	32		[Gantt bars for 2021-2023]																																			
161	M-1180	Stadium Equipment & Seating Submittals, Review, Approval	40	10-Mar-23	04-May-23	32		[Gantt bars for 2021-2023]																																			
162	M-1250	Stadium Equipment & Seating Fab & Deliver	100	05-May-23	26-Sep-23	32		[Gantt bars for 2021-2023]																																			
163	Construction		396	08-Aug-22	12-Mar-24	30		[Gantt bars for 2021-2023]																																			
164	Early Release - Construction Mobilization & Enabling Work		165	08-Aug-22	07-Apr-23	261		[Gantt bars for 2021-2023]																																			

█ Remaining Level of Effort █ Critical Remaining Work
█ Actual Level of Effort ◆ Milestone
█ Actual Level of Effort
█ Actual Work
█ Remaining Work



#	Activity ID	Activity Name	OD	Start	Finish	Total Float	Lag	2021												2022												2023											
								J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
208	Grandstand, Field, and Site		100	28-Sep-23	26-Feb-24	0																																					
209	C-2180	Permanent Site Fencing/Grilles	25	28-Sep-23	02-Nov-23	0																																					
210	C-2190	Stadium Seating	25	28-Sep-23	02-Nov-23	66																																					
211	C-2200	Scoreboard & AV	60	28-Sep-23	27-Dec-23	31																																					
212	C-2210	Playing Field LED Lighting	20	28-Sep-23	26-Oct-23	31																																					
213	C-2230	Playing Field Surface	100	28-Sep-23	26-Feb-24	0																																					
214	C-2220	Site Work - Player/Staff Parking Lot & Curbs, Gutter Sidewalks, etc...	50	28-Sep-23	12-Dec-23	41																																					
215	C-2300	Back Stop Netting & Foul Poles	10	27-Oct-23	09-Nov-23	61																																					
216	C-2280	Wifi System Install	20	29-Nov-23	27-Dec-23	31																																					
217	Start Up & Commissioning		50	14-Nov-23	29-Jan-24	0																																					
218	C-2270	Start-Up, TAB, & Commissioning	50	14-Nov-23	29-Jan-24	0																																					
219	Final Inspections		35	23-Jan-24	12-Mar-24	0																																					
220	C-2320	Turnover Final O&M	20	23-Jan-24	20-Feb-24	15																																					
221	C-2340	Training & Demonstration Sessions	15	30-Jan-24	20-Feb-24	15																																					
222	C-2330	Turnover Final As-Built	10	30-Jan-24	12-Feb-24	20																																					
223	C-2350	Create Punchlist	15	13-Feb-24	05-Mar-24	0																																					
224	C-2360	Final Inspections by AHJ	15	13-Feb-24	05-Mar-24	0																																					
225	C-2370	Certificate of Use & Occupancy	0		12-Mar-24	0																																					
226	C-2380	Certificate of Substantial Completion	0		12-Mar-24	0																																					
227	Closeout		30	13-Mar-24	23-Apr-24	0																																					
228	CL-1000	Complete Punchlist	30	13-Mar-24	23-Apr-24	0																																					
229	CL-1010	Close Out Waste Tracking Documentation	20	13-Mar-24	09-Apr-24	10																																					
230	CL-1020	Turnover Final Certified Site Survey	20	13-Mar-24	09-Apr-24	10																																					
231	CL-1030	Provide New Monuments of Property Corners (at Construction Completion)	20	13-Mar-24	09-Apr-24	10																																					
232	CL-1040	Submit Final As-Built Schedule	30	13-Mar-24	23-Apr-24	0																																					
233	CL-1050	Submit Final Project Report	30	13-Mar-24	23-Apr-24	0																																					
234	CL-1060	Final Completion	0		23-Apr-24	0																																					

█ Remaining Level of Effort █ Critical Remaining Work
█ Actual Level of Effort ◆ Milestone
█ Actual Level of Effort
█ Actual Work
█ Remaining Work

Hagerstown Municipal Stadium Proposal_20220709 GMP-1



Start Date 09-Mar-22
 Finish Date 23-Apr-24
 Data Date 09-Jul-22

Attachment J
Sample Contract



TESTING & INSPECTION SERVICES AGREEMENT

BETWEEN

MARYLAND STADIUM AUTHORITY

AND

[CONSULTANT FIRM NAME]

MSA CONTRACT NO. _____

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MARYLAND STADIUM AUTHORITY
CONTRACT NO. _____ TESTING
& INSPECTION SERVICES AGREEMENT

THIS TESTING & INSPECTION SERVICES AGREEMENT (this "**Agreement**") is entered into this _____ day of _____, 201__ by and between the

MARYLAND STADIUM AUTHORITY, a body politic and corporate and an instrumentality of the State of Maryland ("**MSA**"), and [CONSULTANT FIRM NAME], a [State of Organization] [Type of Organization] ("**Consultant**"),

RECITALS

WHEREAS, Pursuant to Economic Development Article ("ED") § 10-622, Md. Code Ann., for units of the State, MSA may: prepare studies, including site studies, architectural programs, budget estimates, value engineering, and project schedules; design and construct projects; and enter into contracts, retain consultants, and make recommendations related to any of these project activities.
;and

WHEREAS, The Hagerstown Multi-Use Sports and Events Facility Act (the "Facility Act") was enacted by the Maryland General assembly as Chapter 353 of the Acts of 2022 and codified in Title 10, Subtitle 6 of the Economic Development Article of the Annotated Code of Maryland (the "Maryland Stadium Authority Act" and, together with the Facility Act, the "Act"). Pursuant to the Act, the Authority is authorized to issue its lease revenue bonds (the "2022A Bonds") in order to finance a portion of the costs of site acquisition, design and construction of a sports and events facility to be located in Hagerstown, Maryland to be known as the "Hagerstown Multi-Use Sports and Events Facility" (the "**Facility**") and to be used for minor league baseball games, other events and related activities.

WHEREAS, MSA issued a Request for Proposals (the "**RFP**") on _____ for testing & inspection services (the "**Services**") for the Project; and

WHEREAS, MSA selected Consultant based on its professional qualifications, proposal and related submissions; and

WHEREAS, MSA and Consultant desire to enter into this Agreement.

AGREEMENT

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

NOW, THEREFORE, for and in consideration of the promises and covenants, conditions, representations, and warranties contained herein, and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
GENERAL PROVISIONS

Section 1.1 Relationship

Consultant accepts the relationship of trust and confidence established with MSA by this Agreement, and covenants to provide Consultant's reasonable skill and judgment and to cooperate with MSA and its various partners and contractors, including those working on the Project, in furthering the interests of MSA in connection with the Project.

Section 1.2 Compliance with Laws

The Consultant hereby represents and warrants that:

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

(b) It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

(c) EPA compliance. Materials, supplies, equipment and other services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable;

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

(e) All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in this Agreement; and

(f) Consultant shall obtain at its own expense (except as provided in this Agreement), and comply with federal, State, and local permits, licenses, certifications, inspections, insurance, and governmental approvals, required in connection with the Services required under this Agreement.

Section 1.3 Quality of Work & Standard of Care

In performing its duties hereunder, Consultant shall use a level of skill and exhibit a standard of care that is appropriate for a Consultant providing the requisite Services in connection with a large fast-track construction or renovation project of similar size and scope to the Project. Consultant understands and acknowledges that MSA's decision to appoint Consultant is based upon the experience, qualifications, and other materials submitted in response to the RFP. Consultant further represents and warrants that such

materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Consultant and its subcontractors.

Section 1.4 Representations

The Consultant represents that it is thoroughly familiar with, and understand the requirements of the Project and is experienced in providing testing & inspection services. It represents to MSA that it has all of the necessary architectural and engineering education, skill, knowledge and experience required for the Project.

Section 1.5 Contract Documents

1.5.1 Contract Document Priority. The Contract Documents consist of this Agreement, the Contract Affidavit, the RFP including all attachments, exhibits and addenda, the Consultant's Technical Proposal and Financial Proposal (as amended by a best and final offer if applicable). The Technical Proposal and Financial Proposal are together the "**Proposal**".

If there is any conflict among the Contract 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 Consultant's Proposal.

1.5.2 The order of priority in section 1.5.1 notwithstanding, it is the Consultant's responsibility to inform MSA of any material inconsistencies and confirm any information necessary for the complete, successful prosecution of the Services.

1.5.3 Nothing in the Proposal or other submissions from the Consultant shall prevail over any Contract Document unless expressly agreed to in writing by MSA with a properly approved Change Order (*see* Article 9) or modification to the Agreement.

1.5.4 Inconsistent Terms or Requirements. Any provisions herein to the contrary notwithstanding, all Contract Documents shall be construed consistently to the extent possible.

1.5.5 Interpretation of the Contract Documents. MSA's Project Manager shall be the final interpreter of the Contract Documents; and it will furnish with reasonable promptness through MSA or the Architect, such clarifications as it may deem necessary for the proper execution of the Services.

1.5.6 Unless otherwise stated in the Contract Documents, words which have well-known technical construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.5.7 Contract Representatives. Consultant's Project Manager identified in its Technical Proposal, shall be deemed to have authority to render any decision or take any action required under this Agreement. MSA's Project Manager identified in Section 14.18 is the Consultant's MSA contact for the purpose of communicating routine information, requesting assistance, or making routine inquiries regarding this Agreement. This subsection 1.5.8 notwithstanding, only an authorized MSA official acting in the capacity of Contract Representative is authorized to make changes to the scope of Services or to consent to modifications to this Agreement. The Contract Representative may also be MSA's Project Executive.

1.5.8 Entire Agreement. This Agreement represents the entire and integrated agreement between MSA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

1.5.9 References to Articles and Sections. As used in this Agreement, any reference to an Article or Section number refers to Articles and Sections in this Agreement unless otherwise stated.

Section 1.6 Period of Performance

The period of performance (the "**Term**") shall commence on the date identified in the Notice to Proceed (the "**NTP**") and unless terminated sooner pursuant to this Agreement, terminate upon the earliest to occur of (i) Consultant's completion of its Services hereunder; or (ii) as agreed to by MSA and Consultant. The Agreement may be extended at the sole discretion of MSA and at the prices quoted and accepted in the Consultant's Proposal.

ARTICLE 2 **SERVICES**

Section 2.1 Scope of Work

2.1.1 The general scope of work for this Agreement is set forth in the Contract Documents. Consultant shall provide services to MSA as described in the Contract Documents in order to assist with the Project.

2.1.2 In performing its duties hereunder, Consultant shall use a level of skill and exhibit a standard of care that is appropriate for a Consultant providing the requisite services in connection with projects of similar size and scope to the Program. Consultant understands and acknowledges that MSA's decision to appoint Consultant is based upon the experience, qualification, and other materials submitted in response to the RFP. Consultant further represents and warrants that such materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Consultant and its subcontractors.

2.1.3 Consultant shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement and the Contract Documents. Consultant shall reasonably cooperate with MSA and its employees, agents, and contractors in delivering any service hereunder. At all times, Consultant shall keep MSA's Project Manager (as defined below) reasonably informed of the progress made in the performance of all assigned duties.

2.1.4 Any work product, whether written or in electronic format, prepared by Consultant during the term of this Agreement for MSA shall become the sole and exclusive property of MSA. Such work product shall not be used by Consultant or its subcontractors for other projects without the specific written consent of MSA.

2.1.5 Unless Consultant has obtained the prior written consent of MSA's Contract Representative (as defined below), Consultant shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the services or performance of the services under this Agreement, or (b) publish any final reports or documents.

Section 2.2 Additional Services

Consultant shall perform additional services (hereinafter "Additional Services") upon the mutual consent of MSA and Consultant, and upon written authorization to proceed from MSA. Such Additional Services shall be paid in accordance with subsections 3.4 and 3.5 of this Agreement. Compensation for Additional Services shall be based on the hourly rates or fees set forth in Exhibit 4.

Section 2.4 Patents, Copyrights, Trade Secrets and Protected Matters

2.4.1 The Consultant assumes the risk that any materials, equipment, processes, or other items required under this Agreement or furnished by the Consultant are subject to any patent, copyright, trademark, trade secret or other property right of another. Consultant shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by MSA. Consultant shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall hold harmless MSA, the State, and the City from loss or expense on account thereof.

ARTICLE 3
STAFFING

Section 3.1 The Project Team

3.1.1 The Consultant shall not make any changes in the composition of its project team (the “**Project Team**”) identified in its Proposal, or as otherwise consented to in writing by MSA. Any change to the Project Team without MSA’s written consent shall be cause for Termination.

3.1.2 If required by applicable State or federal law, Consultant’s personnel – including members of the Project Team and any subcontractors, shall be subject to a security and/or criminal background check. Before or after award of the contract, at the sole discretion of MSA, those persons found to be unfit to work on State contracts may be excluded from work on the Project at no additional cost to MSA.

3.1.3 Only personnel thoroughly trained and skilled in the tasks assigned them may be employed for any portion of the services. Any Consultant employee, Project Team member, or subcontractor found to be unskilled or untrained shall be removed.

3.1.4 When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel, including subcontractors, employed by, or under contract with, the Consultant for the Project shall be so licensed.

3.1.5 If the MSA in its sole discretion determines that any employee, including a Project Team member or Consultant subcontractor is not performing satisfactorily, MSA shall have the right to direct that Consultant to replace the individual(s). The Consultant shall provide MSA with resumes of possible replacements and MSA shall have the opportunity, but not the obligation to interview replacement candidates.

ARTICLE 4
SUBCONTRACTORS

Section 4.1 Contractual Responsibility

4.1.1 Except as specified in the Proposal, Consultant shall not subcontract any of the Services to be performed under this Agreement without the prior written consent of MSA.

4.1.2 The Consultant is fully responsible to MSA, the State and the City for the acts and omissions of its subcontractors at any tier, and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.

4.1.3 Nothing contained in the Contract Documents shall create any contractual relationship between a subcontractor at any tier and MSA, the State, or the City, and nothing in the Contract Documents is intended to make any such entity a beneficiary of the contract between MSA and Consultant. No subcontractor at any tier shall have or make any claim or cause of action directly against MSA, the State or the City.

Section 4.2 Prompt Payment of Subcontractors

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

(a) Not process further payments to the Consultant until payment to the subcontractor is verified;

(b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

(c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

(d) Place a payment for an undisputed amount in an interest-bearing, escrow account; or

(e) Take other or further actions as appropriate to resolve the withheld payment.

4.2.2 An "undisputed amount" means an amount owed by the Consultant to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation;

(a) Retainage which had been withheld and is, by the terms of the agreement between the Consultant and subcontractor, due to be distributed to the subcontractor; and

(b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

4.23 An act, failure to act, or decision of a Procurement Officer or a representative of MSA, concerning a withheld payment between the Consultant and a subcontractor under this provision, may not:

(a) Affect the rights of the contracting parties under any other provision of law;

(b) Be used as evidence on the merits of a dispute between MSA and the contractor in any other proceeding; or

(c) Result in liability against or prejudice the rights of MSA.

4.24 The remedies enumerated above are in addition to those provided under COMAR 21. 11. 03. 13 with respect; to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

4.25 To ensure compliance with certified MBE subcontract participation goals, MSA may, consistent with GOMAR.21. 1 1.03. 13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:

(i) Inspecting any relevant records of the Consultant;

(ii) Inspecting the jobsite; and

(iii) Interviewing subcontractors and workers.

(b) Verification shall include a review of the:

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

(ii) ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Consultant in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

(c) If MSA determines that the Consultant is not in compliance with certified MBE participation goals, then MSA will notify the Consultant in writing of its findings, and will require the Consultant to take appropriate corrective action, Corrective action

may include, but is not limited to, requiring the Consultant to compensate the MBE for work performed as set forth in the MBE participation schedule.

(d) If MSA determines that the Consultant is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the MSA requires, then MSA may:

- (i) Terminate the contract;
- (ii) Refer the matter to the Office of the Attorney General for appropriate action; or
- (iii) Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

(e) Upon completion of the Contract, but before final payment or release of retainage or both, the Consultant shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

Section 4.3 RESERVED

Section 4.4 Subcontract – Contract Provisions

441 In addition to any other required term or provision contained herein, the Consultant must bind every subcontractor - and will see that every subcontractor agrees to be bound - by the terms of the Contract Documents, as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved by MSA. Consultant must include in any subcontracts the following provisions:

442 Subcontractor agrees to be bound to the Consultant by the terms of the Contract Document between the Consultant and MSA, and to assume toward it all obligations and responsibilities that the Consultant, by those documents assumes towards MSA.

443 Subcontractor agrees to submit to the Consultant applications for payment in such reasonable time as to enable the Consultant to apply for payment under Article 6.

444 The provisions required by Sections 4.2 and 4.4.

445 Each contract shall be assignable to MSA at MSA's election in the event the Consultant is terminated or fails to perform its obligations under the Contract Documents. MSA may assign its rights under those documents and this Agreement to any other unit or instrumentality of the State without notice to the subcontractor.

446 The Consultant shall have the right to require the subcontractor to accelerate performance of its work at its own cost (and not as a cost to MSA) as necessary to satisfy the time requirements set forth in the Project Progress Schedule.

447 The provisions of this Section 4.4 notwithstanding, unless there is an assignment of contract pursuant to this Section the Consultant shall be solely responsible for all subcontractors and none of MSA, the City, or the Architect shall have privity of contract with, or, obligations or liabilities to the subcontractors.

ARTICLE 5
PREVAILING WAGE REQUIREMENTS

Not applicable.

ARTICLE 6
COMPENSATION AND PAYMENT PROVISIONS

Section 6.1 Compensation and Method of Payment

6.1.1 Contract Price. For performing the Services specified in the Contract Documents, MSA shall pay Consultant the not-to-exceed amount of _____ Dollars (\$ _____) as identified in Consultant's Financial Proposal attached hereto as Exhibit 3.

6.1.2 Additional Services. Additional Services performed pursuant to subsection 2.2 shall be paid for in accordance with this Article 6. Compensation for Additional Services shall be based on actual time spent at hourly rates mutually agreed upon by Consultant and MSA.

6.1.3 Invoices. Consultant shall submit detailed invoices (“**Invoice**”), setting forth (i) the name of the employee or subcontractor performing services; (ii) the date(s) of service(s); (iii) a complete description of services performed; (iv) the agreed upon rates charged for said services; and (v) the hours - or fractional hours expended.

6.1.4 Payment Consultant’s compensation will be based upon a reasonable number of actual hours expended by Consultant's employees and subcontractors in the performance of Services, as approved by MSA, multiplied by the agreed upon rates for such Services.

Section 6.2 State Payment Provisions

6.2.1 Invoices are reviewed and approved by MSA. Payment is made by the Maryland State Treasurer subject to the following:

(a) In addition to any other information required by the Procurement Officer, the Consultant’s invoices shall include a tax payer identification number and contract identification number and MSA's Blanket Purchase Order Number (to be provided by MSA).

(b) Payments to the Consultant pursuant to this Agreement and which are not in dispute shall be made no later than thirty (30) days after MSA’s receipt of a proper invoice from the Consultant.

(c) Charges for late payment of invoices, other than as prescribed by SF Title 15, Subtitle 1, or by the Public Service Commission of Maryland with respect to regulated public utilities as applicable, are prohibited.

6.2.2 Consultant shall be paid by Electronic Funds Transfer as required by the RFP unless it has requested and been granted an exemption.

6.2.3 Taxes. The State nor MSA shall not withhold federal, State, local or FICA taxes, if any, from payments made pursuant to this Agreement.

Section 6.3 Reimbursable Expenses

6.3.1 Consultant shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the Consultant in the performance of this Agreement, subject to the terms and conditions set forth in the RFP, this Agreement, and the approval of MSA, and shall include but not be limited to:

6.3.2 The *actual costs* of reproducing and delivering (via USPS, messenger or overnight delivery services) project documents to MSA and other State agencies that will issue permits for the Project or for required review submissions.

6.3.3 Transportation and travel related expenses are included with Services. Therefore, reimbursement will only apply to transportation expenses incurred by the Consultant in connection to travel that is (a) over and above what is included with Services; and (b) requested by, or with the prior approval of MSA. Reimbursement shall be at the standard State rate of travel.

6.3.4 Such other expenses incurred in connection with the Project with the prior written authorization by MSA.

6.3.5 Reimbursable expenses shall be documented with receipts and highlighted in expense reports if combined with non-reimbursable expense. Any reimbursable expenses in excess of \$1,000 requires prior written approval from MSA.

6.3.6 Consultant's projected itemized schedule of reimbursable expenses is included in Exhibit 3.

Section 6.4 Non-Reimbursable Expenses

6.4.1 Consultant shall not be reimbursed for indirect or miscellaneous office expenses such as: (i) secretarial services; (ii) preparation and review of billings; (iii) in-house messenger services; (iv) employee overtime costs; (v) long distance telephone or other communication services between Consultant and MSA or between employees or subcontractors of Consultant; and (vi) cost to reproduce and deliver documents between Consultant's (or its subcontractors') offices.

ARTICLE 7
MINORITY BUSINESS ENTERPRISE

Section 7.1 MBE Certification

7.1.1 Consultant 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 6. Unless otherwise permitted by MSA in accordance with SF Title 14, subtitle 3 and the regulations promulgated pursuant thereto, Consultant shall utilize the MBE’s as specified in the MBE Affidavit. Consultant 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.

Section 7.2 Reporting Requirements

7.2.1 Consultant shall:

- (a) Permit MSA to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;
- (b) Using MSA’s web-based system (B2G), submit monthly to MSA a report listing payments made to each MBE subcontractor in the preceding thirty (30) days and any unpaid invoices over thirty (30) days old received from a certified MBE subcontractor, and the reason payment has not been made;
- (c) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors (through MSA’s web-based system (B2G)) submit monthly to MSA a report identifying the prime contract, and listing:
 - (i) Payments received from Consultant in the preceding thirty (30) days, and
 - (ii) Invoices for which the subcontractor 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 subcontractors.

Section 7.3 MBE Liquidated Damages

7.3.1 If MSA has determined that Consultant 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 Consultant 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.

7.3.2 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)	\$120 per day until the monthly report is submitted as required.
(b) Failure to include in its agreements with an MBE subcontractor a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4)	\$60 per MBE subcontractor
(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 subcontractor and/or amendment of the MBE participation schedule.	The difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific firm and the dollar value of the work actually performed by that MBE firm under this Agreement.
(d) Failure to meet the Construction Manager’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.

ARTICLE 8
INSURANCE

During the Term of this Agreement, including any extension, Consultant shall obtain, maintain, and provide satisfactory evidence of insurance coverage satisfying at least the minimum requirements set forth in Exhibit 8 of this agreement.

ARTICLE 9
CHANGES TO SERVICES OR AGREEMENT

Section 9.1 Change Directives

9.11 MSA may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Services required under the Agreement, including additions, deletions or modifications. Any such change must be conveyed by MSA to Consultant via an executed written change directive (a “**Change Directive**”).

Subject to provision of prompt notice set forth in subsection 9.1.2, Consultant may be entitled to a Change Directive extending the time for performance, or increasing the price for Services, upon discovery of conditions or events (together “**Conditions**”) having a material impact on the schedule or the cost.

9.12 Prompt Notice. If Consultant encounters or discovers Conditions which it reasonably believes may have a material impact on the Services to be provided it shall promptly notify MSA in writing of such Conditions, and the possible effect on cost and schedule. Any notice shall be given as soon as possible, but in no event more than five (5) calendar days following the earlier of when Consultant knew or should have known of the Conditions. Consultant acknowledges that failure to provide timely notice may limit or eliminate MSA's ability to investigate, verify or mitigate such Conditions. Any adjustment to Consultant's price shall be determined by MSA after its review and consideration of the Conditions. Consultant shall include provisions similar to this provision in all of its subcontracts.

9.13 Failure to Agree. In the event of a dispute between MSA and the Consultant as to whether any Services are included in the scope of the Agreement such that the Consultant would be obligated to provide that Service at no additional cost to MSA, the Project Manager may order the Consultant under this Section 9.1 to perform the Service with issuance of a Change Directive. Consultant shall proceed with the work and MSA's Change Directive, without interruption or delay, and may make a claim as provided in Section 10 of this Agreement. Failure to proceed due to a dispute over a Change Directive shall constitute a material breach of this Agreement and entitle MSA to all available remedies for such breach, including, without limitation, termination for default.

ARTICLE 10
DISPUTES

Section 10.1 Dispute Resolution

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

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

10.1.2 A claim shall be made in writing and submitted to the Project Executive for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

10.1.3 When a claim cannot be resolved by mutual agreement, the Consultant shall submit a written request for final decision to the Project Executive. The written request shall set forth all the facts surrounding the controversy.

10.1.4 The Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its claim.

10.1.5 The Project Executive shall render a written decision on all claims within 90 days of receipt of the Consultant's written claim, unless the Project Executive determines that a longer period is necessary to resolve the claim. If a decision is not issued within 90 days, the Project Executive shall notify the Consultant of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Consultant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Project Executive's decision shall be deemed the final action of the MSA.

10.1.6 The Project Executive's decision shall be final and conclusive without prejudice to the rights of the Consultant to institute suit after completion of the Services in a court of competent jurisdiction for losses incurred by Consultant as a result of the Project Executive's decision. Consultant hereby waives any rights that it may have at any time to institute suit or file other claims or causes of action, at law or in equity, prior to completing all of the Services under the Contract Documents.

10.1.7 Pending resolution of a claim, the Consultant shall proceed diligently with the performance of the Agreement in accordance with the Project Executive's decision.

ARTICLE 11
INDEMNIFICATION AND RESPONSIBILITY
FOR CLAIMS AND LIABILITY

Section 11.1 Indemnification

(a) Consultant agrees to indemnify, defend, protect and hold harmless MSA and its officers, agents, members and employees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including reasonable attorney fees, arising out of, caused by, or resulting from Consultant's negligence or willful misconduct.

(b) Consultant shall not be responsible for the acts or omissions of MSA, or any contractor or subcontractor hired or engaged directly by MSA with respect to the Project.

(c) Neither Consultant nor MSA shall be liable to the other for any delays in the performance of their obligations and responsibilities occurring beyond their reasonable controls and/or without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake and epidemic, atmospheric condition of unusual severity, war, and strikes.

(d) The above indemnity shall survive expiration or termination of this Agreement.

Section 11.2 Responsibility for Claims and Liability

The Consultant shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the Services required under the Agreement. Further, it is expressly understood that Consultant shall indemnify and save harmless MSA, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the Services of the Consultant under the contract.

ARTICLE 12
RETENTION OF RECORDS

The Consultant shall retain and maintain all records and documents relating to this Agreement for *three* years after final payment by MSA or the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MSA, including the procurement officer or designee, at all reasonable times.

ARTICLE 13
DISSEMINATION OF INFORMATION

Unless Consultant has obtained the prior written consent of MSA, Consultant shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the Services or performance of the Services under this Agreement, or (b) publish any final reports or documents.

ARTICLE 14
STATE TERMS

Section 14.1 General State Terms

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

14.1.2 Amendment. This Agreement may be amended by and only by an instrument executed and delivered by each party hereto.

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

14.1.4 Incorporation by Reference. All terms and conditions and any changes thereto, are made a part of this Agreement.

14.1.5 Non-Hiring of Employees. No official or employee of the State as defined in State Government Article § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement shall, during the pendency or term of this Agreement and while serving as an official or employee of the State, become or be an employee of the Consultant or any entity that is a subcontractor on this Agreement.

14.1.6 Articles and Headings. The Article and Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or provision thereof.

14.1.7 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 MSA, either personally or as officials of the State, it being understood that in all such matters the act solely as agents and representation of MSA.

Section 14.2 Non-Discrimination Provisions

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

employment and to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

14.2.2 Commercial Nondiscrimination. As a condition of entering into this Agreement, the Consultant represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. The Consultant shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the Consultant from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

Section 14.3 Disclosures and Ethics

14.3.1 Financial Disclosure. Consultant shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$200,000 or more during a calendar year shall, within 30 days of the time when

the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

14.3.2 Statement of Political Contributions. Consultant shall comply with the Election Law Article, Title 14 Subtitle 1, Md. Code Ann., which requires that a person doing public business with the State, shall file a statement with the State Board of Elections as provided in section 14.

14.3.3. Generally, this applies to every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Election a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

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

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

14.3.6 Appropriation of Funds. If funds are not appropriated or otherwise made available to MSA to support continuation of this Agreement, this Agreement shall terminate automatically as of the beginning of the fiscal year for which funds are not available; provided, however, that this will not affect either party's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both Consultant and MSA from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. MSA shall notify the Consultant 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. Consultant may not recover anticipatory profits or costs incurred after termination.

14.3.7 False Statements. Consultant shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to MSA in connection with this Agreement.

Section 14.4 Drug and Alcohol Free Workplace

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

Section 14.5 Tax Exemption

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

Section 14.6 Governmental Immunities

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

Section 14.7 Tort Claims Acts

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

Section 14.8 Independent Contractor Status

The Consultant is an independent Contractor and neither the Consultant nor its employees, agents or representatives shall be considered employees, agents or representative of the State or of MSA. Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners, joint venturers or an association between the State or MSA or the City and the Consultant.

Section 14.9 No Arbitration

No Arbitration: No dispute or controversy under this Agreement shall be subject to binding arbitration.

Section 14.10 Approvals

This Agreement shall not be effective until all required approvals of the Maryland Stadium Authority Board and the State of Maryland Board of Public Works (if required) have been

obtained. No work shall be commenced hereunder until MSA notifies the Consultant that such approvals have been obtained.

Section 14.11 No Third Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either MSA or the Consultant. There are no intended third party beneficiaries of this Agreement.

Section 14.12 Time of the Essence

Time is of the essence in the performance of the obligations of the Consultant under this Agreement.

Section 14.13 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 14.14 Termination

14.14.1 Termination for Default. If the Consultant fails to fulfill its obligation under this Agreement properly and on time, or otherwise violates any provision of the Agreement, MSA may terminate the contract by written notice to the Consultant. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Consultant shall, at MSA's option, become MSA's property. The State / MSA shall pay Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to the Consultant, the Consultant will remain liable after termination and MSA or the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

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

Section 14.15 Severability

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

Section 14.16 Contract Affidavit

Simultaneously with the execution of this Agreement, Consultant shall execute, seal and deliver to MSA the signed contract affidavit attached hereto as Exhibit 5.

Section 14.17 Authority to Execute

The individual signing this Agreement on behalf of Consultant represents and warrants that (i) Consultant is duly organized and authorized to do business in the State of Maryland; and (ii) this Agreement has been duly authorized and is validly executed by an authorized officer of the Consultant.

Section 14.18 Contract Representatives

The following individuals are designated as representatives for the purposes of the routine management of the Agreement and communication between the parties.

MSA Contract Representatives: Gary McGuigan

Project Manager: Cedric Lowe

Project Executive: Al Tyler

Consultant's Contract Representative(s):

Project Manager:

Section 14.19 Notices

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

If to MSA:

Maryland Stadium Authority
351 West Camden Street, Suite 300
Baltimore, MD 21201-2435
Attn: Al Tyler, Vice President

With copy to:

Office of the Attorney General
Attn: Cynthia Hahn, Counsel / MSA
200 St. Paul Place, 20th Floor
Baltimore, MD 21202

If to Consultant:

Name
Address
City, State, Zip
Attn: (Name & Title)

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

The effective date (the “**Effective Date**”) of this Agreement shall be the last date that this Agreement is executed either by the Consultant or the Maryland Stadium Authority.

MARYLAND STADIUM AUTHORITY

By: _____

By: _____ (SEAL)

Michael J. Frenz, Executive Director

[CONSULTANT FIRM NAME]

By: _____

By: _____ (SEAL)

Authorized Officer

Approved for legal form and sufficiency

Amy K. Mataban
Assistant Attorney General
Maryland Stadium Authority

TESTING & INSPECTION SERVICES AGREEMENT

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | Request for Proposals |
| Exhibit 2 | Technical Proposal |
| Exhibit 3 | Price Proposal |
| Exhibit 4 | Bid/Proposal Affidavit |
| Exhibit 5 | Contract Affidavit/Disclosure |
| Exhibit 6 | MDOT-Certified MBE Utilization and Fair Solicitation Affidavit |
| Exhibit 7 | Conflict-of-Interest Information and Disclosure Affidavit |
| Exhibit 8 | Insurance Requirement |

Exhibit 1
Request for Proposals

Exhibit 2
Technical Proposal

Exhibit 3
Price Proposal

Exhibit 4
Bid/Proposal Affidavit

Exhibit 5
Contract Affidavit

Exhibit 6
MDOT-Certified MBE Utilization and Fair Solicitation Affidavit

*Hagerstown Multi-Use Sports and Events Facility
Testing & Inspection Services Agreement
Maryland Stadium Authority | Firm Name*

Exhibit 7
Conflict-of-Interest Information and Disclosure Affidavit

Exhibit 8 Insurance Requirements

Insurance coverage shall include:

A. Professional Liability (PL) Insurance

The Consultant shall obtain and maintain, from and after the date of the Contract, Professional Liability (PL) Insurance to protect MSA, the State of Maryland, **the City of Hagerstown**, and the Hagerstown-Washington Industrial Foundation, Inc. from damages arising from, and against liability for, errors and omissions in design work performed by the Consultant or any member of the Consultant's team. A minimum coverage limit of \$1,000,000 Aggregate is required.

Additional PL insurance requirements:

1. The Consultant shall furnish evidence demonstrating that the limits of coverage stated above are available and unencumbered by previous losses on the policy. During the Contract term, if the available limits in aggregate fall below 50%, the Consultant shall notify the Procurement Officer and take action promptly to restore the limits to the required level.
2. Deductible shall be the responsibility of the Consultant and may not exceed \$25,000 without prior approval by the Procurement Officer.
3. There shall be no exclusion for environmental claims arising out of the performance of the professional services.
4. Firms performing work under a joint venture agreement must furnish evidence in the form of an endorsement by the issuer that the joint venture is insured under the policy.

B. Commercial General Liability Insurance

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for general liability claims (including, but not limited to, claims for bodily injury and property damage, including loss of use) arising from the operations of the Consultant, subcontractors, and suppliers that satisfies the following requirements:

1. Commercial General Liability ("CGL") insurance to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent.
2. Minimum coverage limits of: \$1,000,000 as a per occurrence limit; \$2,000,000 as a general aggregate limit (applied separately to claims arising from the Consultant's performance under the Contract); and \$2,000,000 as a products/completed operations limit.

3. Maryland Stadium Authority, the State of Maryland, the City of Hagerstown, and the Hagerstown-Washington Industrial Foundation, Inc. (collectively “Additional Parties”) shall be added as Additional Insureds by additional insured endorsements ISO CG-20-10 and CG-20-37 or their equivalents. As Additional Insureds, the Additional Parties shall have coverage for liability arising out of the Consultant’s ongoing and completed operations performed for either or both of MSA and Hagerstown-Washington Industrial Foundation, Inc.
4. The CGL insurance policy shall include waivers of subrogation in favor of the Additional Parties.
5. The CGL insurance policy shall be primary and noncontributory with respect to the coverage afforded to the Additional Parties.
6. The CGL insurance policy shall not contain any exclusion for: X, C and/or U hazards; third party actions over claims; or punitive damages.
7. The CGL insurance policy shall include Blanket Written Contractual Liability covering all contractual liabilities and indemnities assumed by the Consultant pursuant to the Contract.
8. The CGL insurance policy shall also include the following extensions:
 - a. The general aggregate limit shall apply separately to the Contract;
 - b. Premises/Operations;
 - c. Actions of Independent Consultants;
 - d. Products/Completed Operations to be maintained for at least two (2) years after the expiration or termination of the Contract;
 - e. Personal injury liability including coverage for offenses related to employment and for offenses assumed under the Contract (including deletion of any standard employment and/or contractual exclusions if contained in the personal injury coverage section); and
 - f. If a Program encroaches within fifty (50) feet of the centerline of a railroad, the CGL insurance policy shall include ISO Endorsement CG-24-17 or its equivalent prior to the Consultant beginning any work on such Project.

C. Automobile Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims arising from bodily injury and/or damage to property of others resulting from the ownership, maintenance, or use of any motor vehicle (whether owned, hired, or not owned), both on-site and off-site. Such Business Automobile Liability (“BAL”) insurance shall also include coverage against uninsured motorists and automobile contractual liability. The BAL insurance shall satisfy the following requirements:

1. Minimum \$2,000,000 combined single limit on coverage.
2. The BAL insurance policy shall include waivers of subrogation in favor of the Additional Parties.
3. The BAL insurance policy shall name the Additional Parties as Additional Insureds.
4. If a Project encroaches within fifty (50) feet of the centerline of a railroad, the BAL insurance policy shall include ISO Endorsement CA- 20-70 or its equivalent prior to the Consultant beginning any work on such Project.

D. Workers Compensation and Employers Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for claims arising from Workers Compensation statutes and from Employer’s Liability or other third party legal liability claims arising from bodily injury, disease, or death of the Consultant’s employees. Such insurance shall satisfy the following requirements:

1. The Consultant shall provide Workers Compensation coverage for all employees and require that their subcontractors provide Workers Compensation coverage for all their employees in accordance with the statutory requirements of the jurisdiction in which the work is being performed.
2. The policy shall provide for both Workers Compensation coverage (“Part A”) and Employers Liability coverage (“Part B”).
3. The minimum limits of coverage for Part A (Workers Compensation) shall be in accordance with the statutory requirements of the jurisdiction in which the work is being performed. The minimum limits of coverage for Part B (Employers Liability) shall be \$1,000,000 for each accident, \$1,000,000 for each employee, and a \$1,000,000 aggregate policy limit for disease.
4. Part B (Employers Liability) of such insurance policy shall include waivers of subrogation in favor of the Additional Parties. The Additional Parties shall

be named as Additional Insureds with respect to Part B (Employers Liability).

E. Excess Liability / Umbrella Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims against the Consultant that exceed the per occurrence or general aggregate limits of the CGL insurance policy, the BAL insurance policy, and Part B (Employer's Liability) of the Workers' Compensation and Employer's Liability insurance policy. Such excess/umbrella insurance shall satisfy the following requirements:

1. Unless otherwise specified by the Procurement Officer, the required minimum coverage limits for such insurance is \$2,000,000 per occurrence.
2. The Additional Parties shall be named as Additional Insureds with respect to such excess/umbrella liability insurance.
3. The excess/umbrella liability insurance policy shall include waivers of subrogation in favor of the Additional Parties.
4. The excess/umbrella liability insurance shall be primary and noncontributory with respect to the coverage afforded to the Additional Parties.

F. Additional insurance requirements

1. The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The Consultant shall purchase and maintain such insurance with a minimum of the limits of liability as specified herein, as otherwise specified by the Procurement Officer with respect to a particular project, or as required by law, whichever is greatest.
2. A policy is not acceptable if it allows the costs associated with investigating, managing, or defending against any claim or any other costs incurred by the insured or the insurer to be deducted from the policy limits.
3. Required insurance shall be purchased from and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage as required herein shall have an AM Best rating of A-VII or better. All policies must be on a primary basis. All policies, except Professional Liability and Workers' Compensation, shall name the Additional Parties as "Additional Insured."
4. Consultant shall be responsible for the maintenance of this insurance regardless of whether the work is performed directly by Consultant, by any

subcontractor, by any person employed by the Consultant or any subcontractor, or by anyone for whose acts the Consultant may be liable.

5. The Consultant agrees, for itself and for its insurers, that neither Consultant nor its insurers may raise or use in the adjustment of claims or in the defense of suits against the Additional Parties, 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) unless requested by MSA.
6. MSA prefers that all liability insurance policies (whether for professional liability, commercial general liability, business automobile liability, excess and/or umbrella liability, employer liability, or otherwise) be written on an “occurrence basis.” However, if any liability insurance policy is on a “claims made” basis, the insurance must be maintained for a period of no less than ten (10) years after the end of the term of the Contract and the retroactive date must be listed as prior to or on the date on which the Contract is executed. If the policy is scheduled to be cancelled, not renewed, or not replaced prior to the expiration of such ten (10) year period, then prior to such cancellation, nonrenewal, or non- replacement, the Consultant must purchase an Extended Reporting Coverage (Tail) to cover the exposures past the cancellation, termination, or expiration date, as applicable.
7. No acceptance and/or approval of any insurance by MSA shall be construed as relieving the Consultant, or the surety or bond, if any, from any liability or obligation imposed upon any of them by the Contract.

Attachment K
Experience Form

Request for Proposals (RFP) - Testing and Inspection Services - Hagerstown Multi-Use Sports and Events Facility

Project Experience

	PROJECT #1	PROJECT #2	PROJECT #3
Project Name and Location			
Owner Name, Contact Person, Email & Phone Number			
Offeror's Role in the Project			
Project Type (New, Renovation, etc.)			
Gross Square Footage of Project			
Project Delivery Method (CMR, CM Agency, DB, Negotiated GMP, GC, etc.)			
Similarities/Relevance to this Project			
Original Completion Date			
Actual Completion Date			
Reason(s) for Variance (if applicable)			
Original Project Construction Cost			
Final Construction Cost			
Reason(s) for Cost Difference (if applicable)			
Offeror's Original Contract Amount			
Offeror's Final Contract Amount			
Reason(s) for Cost Difference (if applicable)			