



Maryland Stadium Authority

Request for Proposals

Design Build Services

Wayne K. Curry Civic Plaza

Issue Date: May 5, 2023

NOTICE:

A prospective Offeror that has received this document from a source other than eMaryland Marketplace Advantage (eMMA) <https://procurement.maryland.gov> should register on eMMA. See section 1.8.

OFFERORS ARE ENCOURAGED TO PARTNER OR JOINT VENTURE WITH MINORITY BUSINESS ENTERPRISES. MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION.

KEY INFORMATION SUMMARY SHEET

MARYLAND STADIUM AUTHORITY

**Request for Proposals
Design Build Services
Wayne K. Curry Civic Plaza**

RFP Issue Date: **May 5, 2023**

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

Procurement Method: Competitive Sealed Proposals

MBE Participation Goal: Design and Preconstruction Services
Overall Goal: 31% with subgoals of 7% for African American firms and 10% for Women-owned firms

Construction Services
Overall goal of 35% with Subgoals of 8% for African-American firms and 11% for Women-owned firms

Pre-Proposal Conference: **May 15, 2023 at 10:00 a.m. (Local Time)**
Web Conference

Site Visit: **May 16, 2023 at 10:00 a.m. (Local Time)**
Wayne K Curry Plaza
1301 McCormick Dr,
Largo, MD 20774
See section 1.6 for details and registration

Proposal Closing Date and Time: **May 31, 2023 at 1:00p.m. (Local Time)**

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SECTION 1

GENERAL INFORMATION

1.1 Summary Statement

Chapter 61 of the Acts of 2022 as codified in ED §§ 10-601, 10-646.4, and 10-657.6 authorizes the Maryland Stadium Authority (the “MSA”) to finance up to \$400,000,000 for site acquisition and the planning, design, and construction of specific facilities proposed to be included in the Prince George’s County Blue Line Corridor (MOU) that formalizes the relationship and role of each in the execution of the work.

Pursuant to the MOU, MSA is issuing this solicitation to select a highly qualified firm to provide design/build services to design and build the new Wayne K. Curry Civic Plaza. The plaza will be located in the current parking lot of the Wayne K. Curry building in Largo, MD. It will be designed to facilitate programming and events such as farmers markets, food trucks, festivals, craft fairs etc.

1.2 Abbreviations and Definitions

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

- a. Agreement – The sample Design-Build Agreement included in this RFP as **Attachment J**.
- b. Architect/Engineer (“A/E”) – The Design-Builder’s design team responsible for providing professional engineering, architectural, and design services for the Project.
- c. Client – Prince George’s County, Maryland
- d. COMAR - Code of Maryland Regulations (available at <http://www.dsd.state.md.us>).
- e. Design Build Agreement – The contract entered into between the Maryland Stadium Authority and the Design-Builder for the execution of the Project. The sample Contract Agreement is attached hereto as **Attachment J** and includes all general MSA terms and conditions, the entire RFP, any addenda, and all or indicated portions of the Offeror’s Proposal.
- f. Design-Builder – The design/build Offeror selected for Contract award under this RFP.
- 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 (<http://www.mdstad.com>).
- k. MSA Business Hours – 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays and official State closures.
- l. MSA Procurement Policies – MSA procurement policies and procedures (available at <http://www.mdstad.com>).
- m. Notice to Proceed (hereinafter “NTP”) – A formal notification issued by the Procurement Officer that directs the successful Offeror to perform work and establishes the date on which the work is to commence on the 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. Owner – Maryland Stadium Authority.
- p. 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.
- q. Project – The design and construction of the Wayne K. Curry Civic Plaza.
- r. 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 Design-Builder.
- s. Project Team – The Design-Builder, MSA, and Client.
- t. Proposal - The submissions provided by Offerors in response to this RFP.
- u. Request for Proposals (“RFP”) – The solicitation document for the execution of the Project.
- v. Selection Committee- The persons responsible for selecting the

successful Offeror.

w. State - The State of Maryland.

1.3 Contract Type

The contract that results from this RFP will include a fixed fee for Design and Preconstruction services.

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 Design-Builder.

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 and Site Visit

A virtual pre-proposal conference (“Conference”) will be held on **May 15, 2023 at 10:00 a.m., Local Time.** Please click on the link below for details regarding the Conference and to RSVP to the event

https://us02web.zoom.us/meeting/register/tZYocOmrqjMuGdDwPsvoCHS5_XKnKWDmZleC

Consistent with the Americans with Disabilities Act, the Annotated Code of Maryland State Personnel and Pensions Article, Title 2-302 and Title 5-2. State Government Article, Title 20, it is the policy of the Maryland Stadium Authority to provide reasonable accommodation when requested by a procurement event participant with a disability, unless such accommodation would cause an undue hardship. The policy regarding requests for reasonable accommodation applies to all aspects of employment and includes the procurement process. If reasonable accommodation is needed, please contact Yamillette Waite, Associate Vice President - Procurement, ywaite@mdstad.com or 443.602.0681.

A Site Visit will take place on **May 16, 2023 at 10:00 a.m., Local Time**. Please click on the link below to register.

<https://www.eventbrite.com/e/site-visit-rfp-design-build-services-wayne-k-curry-civic-plaza-tickets-630716669537>

1.7 The Project Manager

The Project Manager is:

Brent Miller

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 award of the contract Agreement, MSA may change the Project Manager at any time by written notice to the Design-Builder.

1.8 eMaryland Marketplace Advantage (“eMMA”)

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

Questions regarding this RFP shall be submitted electronically, in Word or PDF format, via the following upload link no later than **May 17, 2023 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-rod2de3b233fd4fba7c314bcc7f5f48d>

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.

1.10 Proposal Closing Date and Time – Technical and Financial Proposals

To be considered, **both technical and financial Proposals** shall be uploaded to the following links no later than **May 31, 2023 at 1:00 p.m. (Local Time)**:

Link to upload technical Proposals:

<https://mdstad.sharefile.com/r-r153c9ef8dfd44575b731efc05e4cdc67>

Link to upload password protected financial proposals:

<https://mdstad.sharefile.com/r-r69fb7eb4c65d48e3b5f259645d629ed9>

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 Proposal Closing Date and Time will not be considered. Proposals will not be reviewed publicly.

1.11 Oral Presentations

Short-listed Offerors will be required to attend 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. Oral Presentations are to be held on May 15 and 16, 2023. In your Technical Proposal, please state your availability for the dates provided. Typically, oral presentations will follow a specified format and generally be limited to 60 minutes [45 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 and understanding of the scope of work.

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 K** 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 (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 Agreement if selected for contract award.

1.17 Revisions to the RFP

If it becomes necessary to revise this RFP before the closing date for proposals, an addendum/addenda will be posted on eMMA 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. 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. Acknowledgement of receipt of addenda to the RFP issued after the proposal closing date shall be in the manner specified in the addendum notice. 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. This may be followed by submission of Offeror-revised Proposals and best and final offers (hereinafter “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 years or both.

1.20 Minority Business Enterprise

Minority Business Enterprises are encouraged to respond to this solicitation. **The Offeror shall submit a D-1A form for design services, and a D-1A form for construction services with its technical proposal.** Please refer to the Key Information Summary Sheet of this RFP.

- a. An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any.
- b. Notwithstanding any subgoals established for this RFP, the Design-Builder is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
- c. By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

- 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 subcontractors 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 subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
 - 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.
 - f. 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.
 - g. 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:

1. Outreach Efforts Compliance Statement (**Attachment D-2**);
 2. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
 3. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
 4. 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.
- h. 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.
- i. 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.
- j. 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 Agreement and are hereby expressly incorporated into the Agreement by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see **Design Build Agreement – Attachment J**).
- k. The Offeror is advised that liquidated damages will apply in the event the Design-Builder fails to comply in good faith with the requirements of the MBE program and Contract Agreement.

1.21 Incurred Expenses; Economy of Preparation

MSA will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, making an oral presentation, providing a demonstration or 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 award will be subject to Section 10 of MSA's Procurement Policies and Procedures and the relevant provisions of the Agreement. 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, 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. 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. Subcontractors 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 subcontractor. 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 Design-Builder 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 to use such item.

- b. The Design-Builder will defend or settle, at its own expense, any claim or suit against MSA alleging that any such item furnished by the Design-Builder infringes any patent, trademark, copyright, or trade secret. If a third-party claim that a product infringes that party's patent, trademark, copyright or trade secret, the Design-Builder will defend MSA against that claim at the Design-Builder's expense and will pay all damages, costs, and attorney's fees that a court finally awards, provided MSA: (i) promptly notifies Design-Builder in writing of the claim; and (ii) allows the Design-Builder to control and cooperates with the Design-Builder 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 Design-Builder become, or in the Design-Builder's opinion are likely to become, the subject of a claim of infringement, the Design-Builder will, at its option and expense: (i) procure for MSA 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 Design-Builder and MSA under any termination clause in the contract. The effect of termination of the contract hereunder will be to discharge the Design-Builder and MSA from future performance of the contract, but not from their rights and obligations existing at the time of termination. The Design-Builder shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the contract. MSA shall notify the Design-Builder 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 Design-Builder 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 Agreement shall be construed to require MSA to use any Offeror or exclusively use the Design-Builder for the services described in this RFP. MSA reserves the right to obtain services of any nature from other sources when it is in the best interest of MSA to do so and without notice to any party. MSA makes no guarantees that it will purchase any products or services from the Design-Builder resulting from this RFP.

1.29 Sustainability Policies

MSA is committed to procuring all supplies, services, maintenance, construction, and architectural/engineering 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 an Agreement resulting from this RFP (including without limitation any information or data stored within the Design-Builder'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 Agreement, 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 Agreement; (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 data or records where such loss is due to the intentional act or omission or negligence of the Design-Builder or any of its

subcontractors or agents, the Design-Builder shall be responsible for recreating such lost data in the manner and on the schedule set by the Project Manager. The Design-Builder shall ensure that all data is backed up and recoverable by the Design-Builder.

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 Agreement, and while serving as an official or employee of the State, become or be an employee of the Design-Builder or any entity that is a subcontractor on said Agreement.

1.34 Nondiscrimination in Employment

The Design-Builder 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 subcontractor 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 Design-Builder 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 Design-Builder, to solicit or secure an Agreement, 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 an Agreement.

1.36 Political Contribution Disclosure

The Design-Builder 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 closing date for receipt of Proposals. 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 Agreement award.

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 subcontractors awarded contracts will be required to use the web-based system to submit project information including, but not limited to, certification of payments made and received and certified payroll records (if the contract includes prevailing wage and/or workforce development requirements). MSA may require additional information related to the contract to be provided electronically through the system at any time before, during, or after Agreement award.

1.39 Bonding

The Design-Builder shall have bonding capacity (i.e., performance and payment) of no less than \$7 million.

1.40 Maryland Law

This RFP and any subsequent RFPs or Agreements 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.

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 alternative proposals from a single Offeror.

1.44 Outreach Event

MSA anticipates holding an outreach event(s) to promote procurement opportunities related to the Project. Offerors interested in submitting a proposal in response to this RFP are highly encouraged to sign up and actively participate in the event(s). Please refer to Section 1.6 of this RFP for additional information.

1.45 Corporate Diversity Affidavit and Addendum

Offerors shall complete, sign and submit the Corporate Diversity Affidavit and Addendum included as **Attachment L** to this RFP.

1.46 Commercial Nondiscrimination Clause

As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against

Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

SECTION 2

OFFEROR'S QUALIFICATIONS

2.1 Offeror Qualifications

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

- a. Has at least three (3) years of experience in managing design/build projects of similar size, scope, and complexity;
- b. Is licensed to operate in the State of Maryland;
- c. Has experience providing the following services during both preconstruction and construction phases: quality assurance/quality control, estimating and budget control, CPM scheduling, value engineering, and evaluation and implementation of innovative construction techniques;
- d. Has ability to meet the insurance requirements set forth in the Agreement; and
- e. Has ability to meet the bonding requirements set forth in Section 1.39 of the RFP.

2.2 Key Personnel Qualifications

- a. Project Executive: Served in a similar role on three (3) projects. One of the three projects shall have had a construction cost of approximately \$5 million.
- b. Project Manager(s) for design and construction: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$5 million.
- c. Project Superintendent: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$5 million.
- d. Cost Estimator: Served in a similar role during the preconstruction/design phase on three (3) projects utilizing the construction management at risk or design build delivery method; three (3) of which shall be approximately \$5 million in construction cost. Explain specific experience estimating early design concepts and value engineering.
- e. Lead Scheduler: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$5 million.

NOTE: An Offeror meeting these requirements does not guarantee that the Offeror will be deemed responsible or have its Technical Proposal deemed reasonably susceptible of being selected for award.

SECTION 3

PURPOSE AND SCOPE OF WORK

3.1 Purpose

The MSA is issuing this RFP to contract with a qualified Design/Build firm for the design and construction of a new flexible use public plaza located in the parking lot of the Wayne K. Curry building in Largo, MD. The project will be designed to facilitate programming and events such as farmers' markets, food trucks, festivals, craft fairs, etc. During these events, parking and vehicle traffic will need to be restricted as outlined in the Project Criteria exhibit to the sample contract Agreement, included herein as **Attachment J**.

3.2 Overview

The Project will be executed under the Design-Build with Guaranteed Maximum Price ("GMP") delivery method. The obligations of the Design-Builder are set forth in the Design Build Agreement attached hereto as **Attachment J** as well as other parts of this RFP.

Generally, the Design-Builder will provide the following:

1. **Design and Preconstruction Services** including, but not limited to, design and engineering, scheduling, cost estimating, constructability analysis, logistics planning, value engineering, and preparation and submission of a GMP Proposal for the execution of the Project.
2. **Construction Services** Pursuant to Section 3.6 of the Design Build Agreement, if MSA accepts the GMP the Design-Builder will provide Construction Services as stated in Article 4 of the Design-Build Agreement, including, but not limited to, construction administration services through its design team, project management and field supervision, construction, safety and quality control.

The Guaranteed Maximum Price Limit (the "GMP Limit") for the Project is Seven Million Dollars (including design and pre-construction services).

SECTION 4

PROPOSAL SUBMISSION AND REQUIREMENTS

4.1 Solicitation Process

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

1. Step 1– Submission of Technical Proposal and Financial Proposals

Offerors will submit Proposals in two separate volumes: **Volume I** Technical Proposal; and **Volume II** Financial Proposal. Offerors shall refer to section 1.10 of this RFP for submission links details. **Volume II**, Financial Proposal, shall be password protected, per the requirements in Section 4.3 of this RFP. After the Proposal Closing Date, technical 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.

2. 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.

3. Step 3 – Short-list and Oral Presentations

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

4. Step 4 – Short-listing – Financial Proposal Phase

After oral presentations, and based on achieved rankings, the Selection Committee will short-list firms to participate in the financial phase of the procurement. Short-listed firms will be requested to provide the password to their financial Proposal.

Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

5. Step 5 – Recommendation for Award

The Offeror deemed to provide the best value (technical and financial) to the Project by the Selection Committee will be recommended for award.

4.2 Instruction for Submission of Proposals – General Requirements

Offerors shall submit proposals labeled “**Request for Proposals – Design Build Services – Wayne K. Curry Civic Plaza**” 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.”

Technical proposals shall be uploaded electronically to the link provided in Section 1.10 of the RFP. **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 ½” x 11” format.**

4.3 Volume I - Technical Proposal

This section provides specific instructions for submission of the Offeror’s technical Proposal. The technical Proposal shall follow the format provided below. Please note that **the technical Proposal must not include pricing information.**

a. 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.

b. Title and Table of Contents

The Technical Proposal shall begin with a title page bearing the **legal name** and address of the Offeror, point of contact information for two (2) people (including e-mail address), and the title 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.

c. Executive Summary

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

1. Acknowledge the receipt of any addenda associated with this RFP;
2. Provide the Offeror’s tax identification number;
3. State the Offeror’s legal name. The legal name is the full name of the

entity that, if selected as the successful Offeror, will be awarded the contract Agreement.

4. Identify 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 the joint venture scope of work documents and/or agreement;
5. 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;
6. Provide the Offeror's availability for oral presentations; and
7. List any exceptions the Offeror has taken to the requirements of this RFP, the sample contract Agreement, or any other exhibits or attachments. If an Offeror takes no exception, the Executive Summary should so state.

Warning: A general statement that qualifications/exceptions will be discussed at a later date is not acceptable. Offeror must provide specific information regarding any requested changes. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

d. Experience and Qualifications

1. Corporate Qualifications
 - a. Corporate Profile and References: Provide a completed Corporate Profile Form included herein as **Attachment E**, including three (3) references. The form must be completed by the Offeror and all joint venture partners, if applicable.
 - b. Insurance: Provide proof of insurance, or a letter from the Offeror's insurance carrier, certifying the Offeror's ability to comply with the insurance requirements outlined in the contract Agreement.
 - c. Bonding: Provide a letter from the Offeror's Bonding Company certifying the Offeror's ability to comply with the bonding requirements contained in Section 1.39.
 - d. Provide a copy of its Maryland business license.

2. Corporate Experience

- a. Submit information on five (5) relevant projects, valued at approximately \$5 million or greater, that have achieved substantial completion within the past ten (10) years, and which demonstrate the Offeror's experience and any of its proposed subconsultants as outlined in the Project Experience Form, **Attachment F**.
- b. The project examples shall include the following information:
 1. Identification of project, role of Offeror (preconstruction, construction, etc.), project location, project gross square footage, project type, and building type.
 2. Method of delivery such as: D/B with GMP, D/B, CM at Risk, GC, CM Agency.
 3. Original project construction cost at time of award, final project cost and percentage change; explain variance.
 4. Original completion date at time of award and actual completion date; explain variances.
 5. Describe similarities of the project example to this Project. If performed within an occupied environment, provide details regarding the level of occupancy and major events hosted during construction operations, and any measures taken to accommodate ongoing operations during the construction process.
 6. Project owner's name, email address, and telephone number.
 7. Identify the Project Executive, Project Manager, Project Superintendent, and Project Scheduler for the Project.
 8. Identify any of the proposed Key Personnel who were involved in the project example, including their role and responsibilities.
 9. Provide color photographs of the project.
 10. Summary of the projects must be submitted in the Project Experience Form, included in this RFP as **Attachment F**.

3. Key Personnel Experience and Past Performance

- a. Provide an Organizational Chart identifying the Key Personnel that will be assigned to the Project. At a minimum, the Key Personnel shall include the positions listed in subsections (e) and (f) herein. Identify the person(s) responsible for overall management of the Project, and the key person proposed to be responsible for each of the following activities:
 1. Design and Preconstruction: Management of the Design Process, Interdisciplinary Construction Documents review; constructability reviews; cost models and estimates; schedule; value engineering; procurement; and MBE requirements.
 2. Construction: Coordination of Trade Contractors, Subcontractors, Suppliers; vendors, suppliers, safety; quality control/ inspections;

submittal review; construction waste monitoring; Contract Modification review; claims resolution; schedule control; payment approval; and MBE compliance.

- b. Clearly identify the individual(s) that will attend design meetings and serve as the day-to-day contact for the Project Team.
- c. Clearly identify the individual(s) that will attend construction progress meetings and serve as the day-to-day contact for the Project Team.
- d. Provide a brief narrative outlining the anticipated roles and responsibilities of the Key Personnel during preconstruction and construction.
- e. Provide resumes for the Design-Builder's design professionals and key subconsultants' Key Personnel listed below.
 1. Project Executive
 2. Project Manager
 3. Project Designer
 4. Cost Estimator
 5. Lead Scheduler
 6. Civil Engineer
 7. Structural Engineer
 8. Geotechnical Engineer
 9. Mechanical Engineer
 10. Electrical Engineer
 11. Plumbing Engineer
 12. Landscape Architect
 13. Event/Space Planning Consultant
 14. LEED Consultant
- f. The resumes for the Key Personnel in section (e) above, proposed to be assigned to the preconstruction and construction phases, must include all information required below regarding Key Personnel with each individual's resume. Information included elsewhere in the Proposal may not be considered in the evaluation of the Key Personnel.

Resumes shall include the following information:

1. Educational background, including degree(s) received
2. Work experience with current employer, including duration of employment, with dates, and position(s) held
3. Work experience with prior employers, if relevant, with dates
4. Project experience, preferably on one or more of the projects submitted in response to the Corporate Experience section herein, with emphasis on projects similar in size and nature to this Project. Include the following:
 - Project design start and completion dates (month and year)

- Construction start and substantial completion dates (month and year) for each project.
 - The individual's specific role in both preconstruction/design and the construction phases of each project listed in the resume.
 - The exact period the individual performed the specific role in the design/preconstruction phase (month and year) and in construction phase (month and year), even if the role was performed for the entire design and/or construction phases. If the specific role was performed for a particular part or aspect of the project, provide details.
 - Specifically, state and demonstrate how the qualifications listed in section 2.2 of the RFP are met.
- g. Key Personnel Previous Working Relationships Matrix. Include information that identifies the experience of the Key Personnel working together on the Key Personnel Project Experience Matrix form included with Attachment H.

4. Work Plan

1. Staffing Plan. Provide a completed Staffing Plan, included in this RFP as **Attachment G**, for the Design and Preconstruction Phase and the Construction Phase. Based on the scope and complexity of this Project, include the estimated amount of time that each team member will dedicate to the Project. The Staffing Plan shall identify the actual hours for each individual during the Design and Preconstruction Phase and the percentage of time for each individual during the Construction Phase.
2. Project Work Plan. Provide a detailed narrative that is both technical in nature and effective in communicating the Offeror's approach and methodology to executing the requirements of the Scope of Work outlined in Section 3 of the RFP and the Agreement. Identify the roles, responsibilities and reporting structure for the Key Personnel during the execution of the work.
 - a. Indicate any challenges and opportunities noted by the Offeror and specifically related to this Project.
 - b. Conceptual CPM Schedule: Provide a conceptual CPM schedule describing the time/event relationship between the Design and Preconstruction Phase and the Construction Phase. The activities related to each individual phase of the work (Design and Preconstruction and Construction) are to be grouped separately on the project schedule so the sequence of work for each can be easily identified. Each item of work shall include specific milestones clearly indicating the NTP and Substantial Completion of each major activity as well as the achievement of Substantial Completion,

Use and Occupancy and Final Completion of the Project. Activities related to general and administrative items may be grouped separately if necessary.

1. At a minimum, the schedule shall explain the proposed design, permitting, bidding, construction, and other phases required to complete the work. The schedule must include all stages of the design build process including: Schematic Design, Design Development, seventy percent (70%) Construction Documents, one hundred percent (100%) Construction Documents, GMP Preparation and Negotiation, Construction Phase(s), recommended Early Package(s), Close-Out and Post Construction.
 2. The schedule shall include at least 30 calendar days for approval of the GMP by the MSA Board of Directors and the Maryland Board of Public Works.
 3. The schedule shall contain a minimum of 50 and a maximum of 150 activities to demonstrate the Offeror's understanding of the Project requirements and the responsibilities of the Design-Builder.
3. Cooperation. Describe the Offeror's approach to working actively and collaboratively with the Project Team to help guide the design and construction of the Project. Highlight any unique skills or abilities that the Offeror can/will provide in the execution of the Project.
 4. Bidding and GMP Proposal Preparation. Describe the Offeror's approach to conducting the bidding and GMP Proposal development activities. At a minimum, discuss the following topics.
 - a. The process for organizing and packaging the items of Work.
 - b. The process for advertising and soliciting bids from Trade Contracts and/or Suppliers.
 - c. The process for receiving, evaluating and comparing bids from Trade Contractors/Suppliers.
 - d. The criteria used to recommend Trade Contractors and/or Suppliers for incorporation into the GMP Proposal.
 5. GMP Limit. Comment on the adequacy of the GMP Limit amount identified in Section 3.2 to meet the goals of the Project as presented in the RFP. Highlight any issues or circumstances (i.e., market, administrative, contractual, project cost associated with overtime or expediting, etc.) that could impact the Offeror's ability to ensure the execution of the Project meets the Project Criteria and occurs within the established GMP Limit.

5. Other Required Submissions.

Offerors must submit the following items in the Technical Proposal:

1. A completed Bid/Proposal Affidavit (**Attachment A**). The form must be completed by the Offeror and all joint venture partners (if applicable).
2. A completed Conflict of Interest Information/Affidavit and Disclosure (**Attachment B**). The form must be completed by the Offeror and all joint venture partners (if applicable).
3. A completed Corporate Diversity Affidavit and Addendum (**Attachment L**).
4. **A completed MBE attachment D-1A (Attachment D) for Design/Preconstruction as well as a completed D-1A for Construction.**

4.4 Volume II - Financial Proposal

Financial Proposals shall be submitted in the manner indicated in section 1.10 of the RFP and shall be password protected. After review of the technical Proposals, the Procurement Officer will request the password to the Financial Proposal from short-listed Offerors only. Failure from the Offeror to provide the password by the deadline given by the Procurement Officer will deem the Offeror's Proposal not reasonably susceptible of being selected for award. The financial Proposal shall include the Financial Proposal form (**Attachment I**).

A copy of the Request for Financial Proposal is attached hereto as **Attachment I**. The Offeror shall submit the following documents with its financial proposal:

1. Financial Proposal form, **Attachment I**.
2. Letter from the Offeror's Surety company confirming bonding capacity, per section 1.39.

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. Understanding of the Project and adequacy of the Work Plan presented to provide the proposed services.
- b. Experience and qualifications of the Offeror and its Key Personnel, with specific emphasis on key personnel with similar projects.
- c. Past Performance and References of Offeror.
- d. Work Capacity of Offeror and Key Personnel.
- e. Overall Quality of Submission.
- f. Oral Presentation.

5.3 Financial Criteria

All qualified short-listed Offerors will be given a score based on their evaluated financial proposal. The lowest evaluated financial proposal will receive the maximum financial score. The score for other financial proposals will be determined on a pro-rata basis compared to the lowest evaluated financial proposal.

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offeror in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference may be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required by this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a

federal law or grant affecting the Contract. The preference given will be identical to the preference that the other state, through law, policy, or practice gives to its residents.

5.5 General Selection Process

- a. The contract Agreement 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 Agreement pursuant to this RFP, MSA may require any and 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 Agreement to the responsible Offeror(s) whose proposal is determined to be the most advantageous considering the technical and financial evaluation factors as set forth in this RFP. The award is subject to approval by the MSA Board of Directors and the Board of Public Works.

ATTACHMENTS

Attachments can be downloaded via the following link:

<https://mdstad.sharefile.com/d-se490480e897b429fa28adecee7042482>

- A.**BID/PROPOSAL AFFIDAVIT**
- B.**CONFLICT OF INTEREST AFFIDAVIT**
- C.**PROGRAM AND DESIGN ELEMENTS**
- D.**MBE INSTRUCTIONS AND FORMS**
- E.**CORPORATE PROFILE**
- F.**PROJECT EXPERIENCE FORM**
- G.**STAFFING PLAN**
- H.**KEY PERSONNEL PROJECT EXPERIENCE MATRIX**
- I.**REQUEST FOR FINANCIAL PROPOSAL**
- J.**DESIGN BUILD AGREEMENT**
- K.**CONTRACT AFFIDAVIT**
- L.**CORPORATE DIVERSITY AFFIDAVIT AND ADDENDUM**
- M.**MBE GOAL SETTING FACTORS**

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

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)

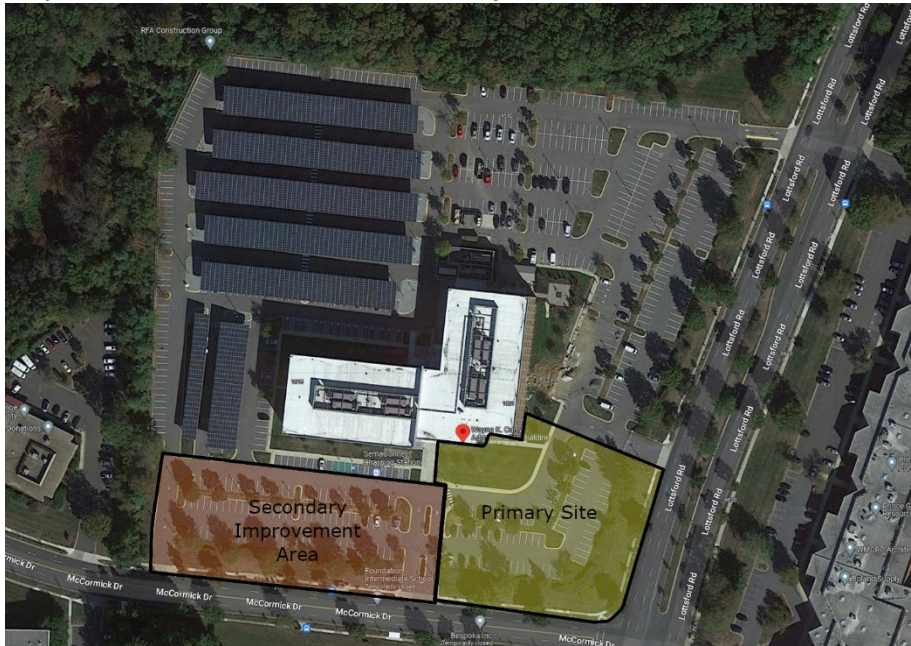
SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment C

Concept Design Report

Project Location

- Project Address: 1301 McCormick Dr, Largo, MD 20774



Program and Design Details

The Primary Site of the Civic Plaza is envisioned as a flexible urban plaza, with a central hardscaped space that can be programmed in a variety of ways.

Potential Programs

The Downtown Largo Placemaking, Wayfinding, and Branding Strategy (or “Placemaking Strategy”) identifies the following activities as potential programs that could be used to activate the Civic Plaza:

- Outdoor movies
- Community festivals
- Food trucks
- Farmers markets
- Live music performances

PG Parks has various placemaking equipment that can be deployed to the plaza for temporary activations, including:

- Skate Mobiles
- Mobile Activity Center (games & crafts)
- Skate Board Mobile
- Portable Parkour Station
- Arts on a Roll
- [Get Fit Mobile](#)
- Bike Trailer
- Movie Screen

Design Elements

With the opening of the University of Maryland Capital Region Medical Center in 2021, Largo has been increasingly identified with health and wellness. The Downtown Largo Placemaking, Wayfinding, and Branding Strategy (or “Placemaking Strategy”) identified Health and Wellness as a potential theme that could drive programming and activation in Largo.

“Largo’s brand may be built around health and wellness: an idea that could be promoted through formal and informal programming in open spaces. Programming could be promoted through partnerships among community, health and parks organizations. Promotions could include yoga, tai-chi, powerwalking or other activities that don’t require special equipment. Activities could be rotated among different locations in Largo, from parks to pop-up spaces. Largo’s potential brand of health and wellness could also be expanded to include the idea of play as part of a healthy lifestyle for people of all ages. Pop-up play areas can support people’s well-being and create intergenerational social gathering opportunities. Specific places can be designated for play and low-cost equipment for staging outdoor games (cornhole, croquet, ping pong, chess).”

This concept could be incorporated into design elements of the plaza. The Civic Plaza could also incorporate design elements that tie it into larger placemaking initiatives planned for Downtown Largo, including the Arts Walk, Complete Streets, general wayfinding and branding.

Potential design elements for incorporation into the plaza might include:

- Public art
 - A dedicated space for a permanent or rotating public art installation.
 - Plaza fixtures, furnishings, surfaces that double as public art (seating elements, lighting fixtures, pavers, etc.)
 - [Superkilen, Copenhagen](#)
 - [Afghan Bazaar, Melbourne](#)
 - [Harvard Plaza, Cambridge](#)
 - [The Goods Line, Sydney](#)
 - [Nicholson St Mall, Melbourne](#)
 - Patricia’s Green, San Francisco
- Health and wellness
 - Plaza fixtures and furnishings that double as fitness and recreation equipment
 - [Proxy, San Francisco](#)
 - [Marina Green Fitness Court, San Francisco](#)
 - [Monash University Caulfield Campus Green, Melbourne](#)
 - [Superkilen, Copenhagen](#)

Secondary Improvement Area

The desire to maintain operation of the Wayne K Curry building’s tenants restricts the ability to reprogram the west parking area to the West of the Primary Site. The secondary improvement area can be reworked to entice foot traffic and be made more flexible to large events while maintaining the existing parking arrangement.

Attachment D

MBE Instructions and Forms

Attachment D. Minority Business Enterprise (MBE) Forms

D-1A MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE
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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/offeree fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

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

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

Example for illustrative purposes of applying the 60% rule:

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

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

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

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

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

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

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

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

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

Overall Goal

Total MBE Participation (include all categories): _____ %

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &
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 Request for Proposals for Design-Build Services for the Wayne K. Curry Civic Plaza (Design Phase), I affirm the following:

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

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 31 percent and all of the following subgoals:

- 7 percent for African American-owned MBE firms
- percent for Hispanic American-owned MBE firms
- percent for Asian American-owned MBE firms
- 10 percent for Women-owned MBE firms

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

OR

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

Additional MBE Documentation

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

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

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

Information Provided to MBE firms

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

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number
	Design-Build Services (Design Phase) Wayne K. Curry Civic Plaza	

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE 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%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>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>

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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

Attachment D. Minority Business Enterprise (MBE) Forms

D-1A MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE
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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/offeree fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

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

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

Example for illustrative purposes of applying the 60% rule:

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

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

Apply 60% Rule - Total percentage of Supplies/Products 5% 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): _____ %

**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 Request for Proposals for Design-Build Services for the Wayne K. Curry Civic Plaza (Construction Phase), I affirm the following:

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

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 35 percent and all of the following subgoals:

- 8 percent for African American-owned MBE firms
- percent for Hispanic American-owned MBE firms
- percent for Asian American-owned MBE firms
- 11 percent for Women-owned MBE firms

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

OR

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

Additional MBE Documentation

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

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

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

Information Provided to MBE firms

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

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number
	Design-Build Services (Construction Phase) Wayne K. Curry Civic Plaza	

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE 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%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>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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Bidder/Offeror must sign below:**

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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: <hr/> <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: <hr/> <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

Construction - 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 solicitation.

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
2019	_____	_____	_____
2020	_____	_____	_____
2021	_____	_____	_____
2022	_____	_____	_____

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: _____

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.

Safety

Have you received any regulatory citations (e.g. federal or state OSHA) in the last three years? Yes/No

If yes, provide explanation:

Provide your Workers' Compensation Experience Modification Rates (EMR) for the last 4 years

2019 _____

2020 _____

2021 _____

2022 _____

If EMR not applicable, provide explanation _____

Prepared By:

Name: _____

Title: _____

Signature: _____

Date: _____

Attachment F

Project Experience Form

**Request for Proposals (RFP)
Design-Build Services - Hagerstown Multi-Use Sports and Events Facility**

Project Experience Form

	PROJECT #1	PROJECT #2	PROJECT #3	PROJECT #4	PROJECT #5
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 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)					
Preconstruction Services Provided (Yes / No. If Yes, detail the level of services provided.)					
Construction Services Provided (Yes / No. If yes detail the level of services provided.)					
Project Executive					
Project Manager					
Field Superintendent					
Project Scheduler					

Attachment G

Staffing Plan

Attachment H

Key Personnel Project Experience Matrix

Attachment I

Financial Proposal Form

**REQUEST FOR FINANCIAL PROPOSAL
DESIGN BUILD SERVICES
WAYNE K. CURRY CIVIC PLAZA
ATTACHMENT A
FINANCIAL PROPOSAL FORM**

1.0 Preconstruction Services:	\$	-
Allowance For Travel and Reimbursables:	\$	-
Subtotal:	\$	-
Owner Contingency (equal to 10% of Subtotal):	\$	-
Owner's Allowance (Software, Licenses, etc.):	\$	5,000.00
Total Preconstruction Services Fee:	\$	5,000.00

2.0		
	Trade Contractor P&P Bonds/Default Insurance (<i>Cell B13 on Attachment B</i>):	0.00%
	DB Contingency based on 70% CDs (<i>Cell B15 on Attachment B</i>):	0.00%
	DB Builder's Risk Insurance (<i>Cell B19 on Attachment B</i>):	0.00%
	DB Payment and Performance Bonds (<i>Cell B21 on Attachment B</i>):	0.00%
	DB Insurances (i.e GLI, Auto, etc.) (<i>Cell B23 on Attachment B</i>):	0.00%
	DB Fee (<i>Cell B25 on Attachment B</i>):	0.00%

3.0 Estimated General Conditions Fee (Attachment C):	\$	-
--	----	---

**REQUEST FOR FINANCIAL PROPOSAL
DESIGN BUILD SERVICES
WAYNE K. CURRY CIVIC PLAZA
ATTACHMENT B
GMP CALCULATION FORM**

	A	B	C	D	E
1	GUARANTEED MAXIMUM PRICE SUMMARY				
2	Cost of Work Item #1	1	LS	\$ -	\$ -
3	Cost of Work Item #2	1	LS	\$ -	\$ -
4	Cost of Work Item #3	1	LS	\$ -	\$ -
5	Cost of Work Item #4	1	LS	\$ -	\$ -
6	Cost of Work Item #5	1	LS	\$ -	\$ -
7	Cost of Work Item #6	1	LS	\$ -	\$ -
8	Cost of Work Item #7	1	LS	\$ -	\$ -
9	Cost of Work Item #8	1	LS	\$ -	\$ -
10	Cost of Work Item #9	1	LS	\$ -	\$ -
11	Cost of Work Item #10	1	LS	\$ -	\$ -
12	Subtotal Cost of Work			\$ -	-
13	Add Alternates (10% per DB Agreement Section 2.14.6)	10.00%	of	\$ -	\$ -
14	Subtotal			\$ -	-
15	Trade Contractor P&P Bonds / Default Insurance	0.00%	of	\$ -	\$ -
16	Subtotal			\$ -	-
17	DB Contingency (Based on 70% CDs)	0.00%	of	\$ -	\$ -
18	Subtotal			\$ -	-
19	General Conditions Fee	1	LS	\$ -	\$ -
20	Subtotal			\$ -	-
21	DB Builder's Risk Insurance	0.00%	of	\$ -	\$ -
22	Subtotal			\$ -	-
23	DB Payment and Performance Bonds	0.00%	of	\$ -	\$ -
24	Subtotal			\$ -	-
25	DB Insurances (i.e GLI, Auto, etc.)	0.00%	of	\$ -	\$ -
26	Subtotal			\$ -	-
27	DB Fee	0.00%	of	\$ -	\$ -
28	Subtotal			\$ -	-
29	DB Project Allowances & Holds (Attached):	1	LS	\$ -	<i>TBD</i>
30	Owner Contingency, Allowances & Holds	1	LS	\$ -	<i>TBD</i>
31	TOTAL GUARANTEED MAXIMUM PRICE			\$ -	-

**REQUEST FOR FINANCIAL PROPOSAL
DESIGN BUILD SERVICES
WAYNE K. CURRY CIVIC PLAZA
ATTACHMENT B1
DB ALLOWANCES AND HOLDS**

ALLOWANCES & HOLDS SUMMARY						
Allowance/Hold Item #1	1	LS	\$	-	\$	-
Allowance/Hold Item #2	1	LS	\$	-	\$	-
Allowance/Hold Item #3	1	LS	\$	-	\$	-
Allowance/Hold Item #4	1	LS	\$	-	\$	-
Allowance/Hold Item #5	1	LS	\$	-	\$	-
Allowance/Hold Item #6	1	LS	\$	-	\$	-
Allowance/Hold Item #7	1	LS	\$	-	\$	-
Allowance/Hold Item #8	1	LS	\$	-	\$	-
Allowance/Hold Item #9	1	LS	\$	-	\$	-
Allowance/Hold Item #10	1	LS	\$	-	\$	-
Subtotal					\$	-
Subcontractor P&P Bonds / Subcontractor Default Insurance*	0.00%		of \$	-	\$	-
Subtotal of Direct Work					\$	-
DB Contingency	1	LS	Included with GMP		Included with GMP	
Subtotal Cost of Construction					\$	-
General Conditions Fee	1	LS	Included with GMP		Included with GMP	
Subtotal					\$	-
DB Builder's Risk Insurance*	0.00%		of \$	-	\$	-
Subtotal					\$	-
DB Payment and Performance Bonds*	0.00%		of \$	-	\$	-
Subtotal					\$	-
DB General Liability Insurance*	0.00%		of \$	-	\$	-
Subtotal					\$	-
DB Fee*	0.00%		of \$	-	\$	-
TOTAL ALLOWANCES & HOLDS					\$	-

* Amounts from GMP Calculation Form

**REQUEST FOR FINANCIAL PROPOSAL
DESIGN BUILD SERVICES
WAYNE K. CURRY CIVIC PLAZA
ATTACHMENT C
ESTIMATED GENERAL CONDITIONS**

*Rate is **Fully Loaded** to include all costs associated with the individual's assignment to the Project. This includes, but is not limited to, payroll burden expenses; vehicle costs, including lease, insurance, maintenance, repair and fuel; out-of-town travel expenses including per diem and overnight stay expenses.

Category	Name	MONTHS	TOTAL HOURS	RATE*	TOTAL COST (Total Hours x Rate)
Project Executive		0.00	-	\$ -	\$ -
Project Manager		0.00	-	\$ -	\$ -
Project Superintendent		0.00	-	\$ -	\$ -
Cost Estimator		0.00	-	\$ -	\$ -
Lead Scheduler		0.00	-	\$ -	\$ -
Project Manager #2		0.00	-	\$ -	\$ -
Assistant Project Manager		0.00	-	\$ -	\$ -
Assistant Superintendent		0.00	-	\$ -	\$ -
Project Engineer		0.00	-	\$ -	\$ -
Field Engineer		0.00	-	\$ -	\$ -
Accounting		0.00	-	\$ -	\$ -
QA/QC		0.00	-	\$ -	\$ -
MBE		0.00	-	\$ -	\$ -
BIM		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
SUBTOTAL LABOR COST:					\$ -
Safety and Site Security	First aid supplies; hardhats and goggles; safety signage; security locks.	0.00		\$ -	\$ -
Temporary Field Facilities and Services	Rent, set-up, and removal of trailers for the CM and for MSA site representative; field offices' utilities, security, communication services, and cleaning; temporary sanitary facilities; Project signs.	0.00		\$ -	\$ -

**REQUEST FOR FINANCIAL PROPOSAL
DESIGN BUILD SERVICES
WAYNE K. CURRY CIVIC PLAZA
ATTACHMENT C
ESTIMATED GENERAL CONDITIONS**

Field Offices' Equipment and Software	Field office equipment, maintenance and repair; field office furniture; field office computer equipment, software, maintenance, repair, and support; equivalent requirements for the MSA on-site field representative (with the exception of computer equipment and software).	0.00	-	\$ -	\$ -
Field Offices' Supplies and Postage/Shipping	Office supplies for CM and MSA; postage/ shipping.	0.00		\$ -	\$ -
Professional Services	Cost of Services Not Included in the CM's Construction Services Fee or Trade Contracts	0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Project Documentation and Reproduction	Per Requirements of Contract Documents			With General Requirements in Cost of Work	
Temporary Utilities	Consumption for Temporary Project Utilities			With General Requirements in Cost of Work	
Waste Management and Daily Cleaning	Cost of Services for Dumpsters, Street Sweeping, Etc.			With General Requirements in Cost of Work	
Weather and Other Protection	Temporary weather and dust protection not in Trade Contracts; site snow removal; materials for maintenance of erosion control not in Site Trade Contract.			With General Requirements in Cost of Work	
Material Handling	Chutes, Rental Equipment, etc.			With General Requirements in Cost of Work	
Elevator Operator(s)	If Applicable			With General Requirements in Cost of Work	
Miscellaneous Materials and Small Tools	Miscellaneous materials; small tools; surveying equipment.			With General Requirements in Cost of Work	
Protection of Finished Work	If Not Included In Trade Contracts			With General Requirements in Cost of Work	
Permit Fees	Cost of the Building Permit is by Owner. Costs associated with construction related permits are to be included in the GMP and/or the Trade Contracts.			Construction related permits included in Trade Contracts	
SUBTOTAL NON-LABOR COST:				\$	-
TOTAL ESTIMATED GENERAL CONDITIONS (Labor plus Non-Labor Cost)**:				\$	-

Attachment J

Design Build Agreement



**WAYNE K. CURRY CIVIC PLAZA
DESIGN-BUILD AGREEMENT**

**BETWEEN
MARYLAND STADIUM AUTHORITY
&
[FIRM NAME]**

MSA CONTRACT No. _____

DESIGN-BUILD AGREEMENT

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WAYNE K. CURRY CIVIC PLAZA DESIGN-BUILD AGREEMENT

DESIGN BUILD AGREEMENT

WITH

GUARANATEED MAXIMUM PRICE

Wayne K Curry Civic Plaza

This Design Build Agreement (this “Agreement”) is made as of this _____th day of _____
2023.

between the Owner:

Maryland Stadium Authority
The Warehouse at Camden Yards
351 West Camden Street, Suite 300
Baltimore, MD 21201

and the Design Build Contractor

Name
Address
City, State, Zip Code

The Project is:

Project Name
Address
City, State, Zip Code (the “Project”)

The Client is:

Name
Address
City, State, Zip Code (the “Client”)

MARYLAND STADIUM AUTHORITY (the “**Authority**”), a body politic and corporate and an instrumentality of the State of Maryland (the “**State**”) hereby contracts with _____ (“**Design-Builder**”), a _____ corporation to perform all work (the “**Work**”) in connection with _____, (the “**Project**”), as said Work is set forth in the Plans and Specifications furnished by the Design-Builder and other Contract Documents hereafter specified.

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Definitions

Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Request for Proposals (“**RFP**”) or as generally recognized within the industry.

“**Add Alternate**” or “**Alternate**” means a line item that allows for inclusion of, or the use of an item or construction method that is different from the item or method identified in the current Construction Documents.

“**Architect**” is the entity under contract with the Design-Builder and is responsible for the design services.

“**Bidding and GMP Development Phase**” has the meaning set forth in Article 3.

“**Change Orders**” means a change order submitted and approved as provided in Section 18.6.

“**Client**” means the Prince George’s County.

“**COMAR**” means the Code of Maryland Regulations.

“**Commencement Date**” means the Project commencement date identified in the Notice to Proceed.

“**Construction Documents**” means those documents set forth in Section 2.1.2.

“**Construction Phase**” has the meaning set forth in Article 4.

“**Construction Team**” includes the Design-Build Team and its Trade Contractors, Subcontractors and Suppliers.

“**Contract**” means the written agreement between MSA and the Design-Builder consisting of the Contract Documents, and each is fully a part of the Contract as if attached to this Agreement or incorporated herein. Contract as used in this Agreement means this Agreement inclusive of all Contract Documents.

“**Contract Documents**” means this Agreement, Design-Build documents, the GMP documentation, documents listed in this Agreement, and all amendments, modifications, addenda, and exhibits to the foregoing.

“**Contract Price**” means Design and Pre-construction Services, exclusive of GMP. “**Contract**

Term” means the period for Contract performance from the Commencement Date through and including the Final Completion Date, as amended or modified, including Substantial and Final Completion.

“**Contractor**” means the Design-Builder.

“**Critical Path Method**” (CPM) means a scheduling/management tool recognizing a network of work elements or activities and a critical path for completion of a construction project.

“**Day**” means calendar day unless otherwise designated.

“**Delay**” the term “delay” has the meaning set forth in Section 12.1.1 herein.

“**Design Build Team**” means the Design-Builder, the Architect, and consultants under contract with the Design-Builder.

“**Design-Builder**” or “**Contractor**” means the party under contract with MSA herein. Design-Builder also refers to the Design Build Team or member of the Design Build Team as the context requires.

“**Design Development Phase**” has the meaning set forth in Section 2.23.

“**DGS**” means the Maryland Department of General Services.

“**DGS Manual**” means the Maryland Department of General Services Procedure Manual for Professional Services.

“**Drawings**” refers to the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“**FF&E**” means furniture, fixtures, and equipment.

“**Final Completion**” means the MSA and the Design-Builder’s Architect have certified that the Project has achieved final completion in strict compliance with the terms of the Contract Documents including all of the items on the Punch List (*see* section 6.5) have been fully completed and the Design-Builder has completely and satisfactorily performed all of its obligations and the Certificate of Final Completion has been issued.

“**Final Completion Date**” means the date by which the Project must be finally complete.

“**GMP**” means the Guaranteed Maximum Price which is the cost of the Work (excluding pre-construction) to be performed by the Design-Builder that has been or will be agreed to by the

Design-Builder and MSA and set forth in a modification to this Agreement after the Design Phase is complete and the GMP has been accepted by MSA.

“**Guaranteed Maximum Price Limit**” (**GMP Limit**) is identified in the RFP and means the maximum amount available for the construction of the Project (including supervision, labor, materials, equipment, supplies, etc.).

“**Hazardous Material**” has the meaning set forth in Section 1.5.

“**Including**” means “including but not limited to.”

“**Interdisciplinary Review**” has the meaning set forth in Section 2.15.

“**Liquidated Damages**” has the meaning set forth in Section 12.6. (*see also, MBE Liquidated Damages*).

“**MBE**” means Minority Business Enterprise Program.

“**MBE Liquidated Damages**” has the meaning set forth in Section 20.8 and Article 24.

“**MSA**” means the Maryland Stadium Authority and includes the State, the Project Manager or any person by name or title authorized to act on behalf of MSA.

“**Notice to Proceed**” (**NTP**) means a written notice to the Design-Builder of the start date on which it shall begin the prosecution of the Work.

“**Owner**” means MSA.

“**Person**” means individuals and businesses regardless of legal status or organization.

“**Plans**” means the official design drawings issued or accepted by MSA as part of the Contract Documents, including those incorporated into the Contract Documents by reference.

“**Project**” is the total design and construction to be performed under this Agreement, as generally described in **Exhibit C** attached hereto.

“**Project Criteria**” means the minimum criteria to be met as part of the design as set forth on attached Exhibit A.

“**Project Team**” means the Design-Builder, MSA and the Client.

“**Project Progress Schedule**” or “**Project Schedule**” means the schedules, reports, schedule of values, and any other information described in or required by the attached **Exhibit J**.

“**Proposal**” includes the Technical Proposal, Financial Proposal and the Best and Final Offer Proposal (if applicable) accepted by the MSA at the time of award of the Contract.

“**Reasonably Inferred**” means that if an item or a system is either shown or specified, although not every detail may be shown or specified, all material and equipment normally furnished with

such items or system and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted by MSA. This term takes into consideration the normal understanding that not every detail is to be given in the Contract Document. If there is a difference of opinion, MSA shall make the determination as to the standards of what is reasonably inferable. The Design-Builder shall not be entitled to increase the GMP due to an omission in, or a conflict between the Contract Documents of any detail or specification which the Contract Documents may require.

“**RFP**” means the Request for Proposals dated and issued by MSA for Design Build services.

“**Solicitation Documents**” means MSA’s Request for Proposals and any amendment(s) thereto.

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

“**Subcontractor**” except as otherwise provided herein, “Subcontractor” means an entity having a direct contract with the Design-Builder or a Trade Contractor to furnish a part of the Work. It includes one who furnishes labor, material or equipment worked to a design according to the Contract Documents for the Work.

“**Submittals**” means shop drawings, material data, samples, product data or any other item required to be received, reviewed, and approved by the Architect and/or MSA in accordance with the Contact or Construction Documents.

“**Substantial Completion**” subject to the provisions of Section 11.2 herein means:

(a) the Work has been fully and finally completed in strict compliance with the Contract Documents (*except* for any outstanding items on the Punch List (*see* Article 10); and the Project or property can be fully and freely occupied and/or utilized for the purpose intended without hardship.

(b) The Work has been inspected and approved by all state and local agencies and other authorities as applicable, having jurisdiction over the Work.

(c) Guests and invitees can use all public facilities and area, all elevators, parking lots, road, and sidewalks.

(d) All normal means of ingress and egress are clear of obstruction.

(e) All fire, life, safety systems are complete and operable.

(f) All mechanical, plumbing and electrical systems are complete and operable.

(g) Design-Builder has coordinated the FF&E for the Project (*see* Section 4.16).

(h) Design-Builder has satisfied the requirements of Section 4.19 (“as-built” drawings).

(i) Design-Builder has satisfied the requirements of Article 11 with respect to Substantial Completion.

“**Substantial Completion Date**” means the date identified in the Notice to Proceed for Construction by which the Project must be substantially complete.

“**Supplier**” means an entity having a direct contract with the Design-Builder, Trade Contractor or Subcontractor to furnish material or equipment as a part of the Work.

“**Trade Contractor**” means an entity having a direct contract with the Design-Builder to furnish a part of the Work. It includes one who furnishes labor, material or equipment worked to a design according to the Contract Documents for the Work. As used herein, unless specifically stated otherwise, Trade Contractor includes Subcontractor.

“**Work**” or “**work**” is the provision of all services, including design services, labor, materials, supplies, utilities, equipment and other incidentals and the manufacture or fabrication of materials or equipment necessary (or reasonably inferable) for the successful completion of the Project and the carrying out of all the duties and obligations of the Contract (as such may be modified or amended).

Section 1.2 Contract Documents

1.2.1 Contract Document Priority.

(a) If there are any inconsistencies between or among the Contract Documents, the Contract Documents shall control in the following order of priority:

First: This Agreement as subsequently modified or amended

Second: Project Criteria

Third: RFP

Fourth: All other exhibits to this Agreement

(b) The order of priority in (a) notwithstanding, it is the Contractor’s responsibility to inform the MSA and the Architect of any material inconsistencies and confirm any information necessary for the complete, successful prosecution of the Work in accordance with the approved Project schedule.

(c) Nothing in the bid, proposal, or other submissions from the Design-Builder shall prevail over any Contract Document unless expressly agreed to in writing by the MSA Project Manager with a properly approved Change Order or Contract modification.

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

1.2.3 Interpretation of the Contract Documents. The 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 Work.

1.2.4 Entire Agreement. This Agreement represents the entire and integrated agreement between the MSA and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2.5 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 1.3 Conformity with Contract Documents

1.3.1 All work performed, and all materials furnished shall be in conformity with the Contract Documents.

1.3.2 MSA may obtain an independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the MSA. Such independent review shall be undertaken at the MSA's expense and shall not delay the timely execution of the Work.

1.3.3 In the event MSA finds the materials, or the finished product in which the materials were used, or the Work performed are not in complete conformity with the Contract Documents and have resulted in inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Design-Builder.

1.3.4 In the event MSA finds the materials or the finished project in which the materials are used are not in complete conformity with the Contract Documents, but have resulted in a satisfactory product, it shall then determine *if* the Work shall be accepted. If the Work is determined to be acceptable, the Project Manager will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment, if any. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder.

1.3.5 The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

1.3.6 Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Design-Builder in dividing the Work among Trade Contractors, Subcontractors or Suppliers in establishing the extent of Work to be performed.

1.3.7 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.

Section 1.4 General Contract Conditions and Terms

1.4.1 Relationship. Design-Builder recognizes and accepts that MSA is entering into this Contract in reliance on Design-Builder's expertise, skills, and abilities with respect to performing its obligations hereunder. The Design-Builder accepts the relationship of trust and confidence established between it and MSA by this Contract, and covenants to furnish its best efforts, skill and judgment and to cooperate with any other consultants engaged by MSA.

1.4.2 MSA is the principal decision-making authority within the Project Team. In the event of any disagreement or dispute between any members of the Project Team regarding the Project, MSA shall be the final decision making authority.

1.4.3 Ownership. All documents created in connection with the Work and the results of any tests, surveys, inspections, photographs, drawings, specifications, schedules, data processing output, CADDs, studies, reports, models and other items prepared by or with the assistance of the Design-Builder, its employees, Trade Contractors, Subcontractors, Suppliers, consultants, et al., shall be the property of MSA upon payment for said Work or part thereof notwithstanding termination pursuant to Article 22 (whether for convenience or default). Design-Builder shall be entitled to retain one set of such documents provided however that it shall not use such documents in connection with any other projects. This Section 1.4.3 shall not apply to the Design-Builder's proprietary project control system (if applicable).

1.4.4 Compliance with laws. The Design-Builder 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 Contract; and

(f) Design-Builder 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 Work required under the Contract.

1.4.5 Conditions Affecting the Work.

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

(b) Site Conditions. The Design-Builder acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric

power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Design-Builder further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by or on behalf of MSA, as well as from information presented by the drawings and specifications made a part of this Agreement. Any failure by the Design-Builder to acquaint itself with the available information may not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. MSA assumes no responsibility for any conclusions or interpretations made by the Design-Builder on the basis of the information made available by MSA.

1.4.6 Differing Site Conditions.

(a) The Design-Builder shall promptly (but in no event more than ten (10) business days from the date Design-Builder becomes, or should have become aware) and before such conditions are disturbed, notify MSA in writing of:

(i) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or

(ii) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) MSA shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made, and the Agreement modified in writing accordingly.

(c) No claim of the Design-Builder under this clause shall be allowed unless the Design-Builder has given the notice required in subsection (a) of this clause; provided, however, the time prescribed therefore may be extended by MSA.

(d) No claim by the Design-Builder for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

Section 1.5 Hazardous Materials

1.5.1 For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance", "hazardous waste", or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act.

1.5.2 In the event the Design-Builder encounters any materials reasonably believed to be hazardous substances and if deposited prior to the date hereof other than as identified in the environmental reports or as otherwise disclosed to the Design-Builder, and not in the course of the

Work by the Design-Builder or its subcontractors, the Design-Builder shall immediately stop work in the affected area and report the condition in writing to MSA.

1.5.3 The Work in the affected area shall not resume except by written agreement of MSA and the Design-Builder, if in fact materials that are hazardous substances have not been rendered harmless.

1.5.4 MSA shall contract to have the hazardous substances removed or rendered harmless (which contract may be with the Design-Builder if mutually agreeable) and MSA shall bear the costs and expense of same.

ARTICLE 2 DESIGN & PRECONSTRUCTION SERVICES

Section 2.1 Generally

2.1.1 The Design-Builder shall provide complete architecture and engineering services necessary to result in a complete and fully functioning facility compliant with the requirements of the Contract, the Project Criteria included in Exhibit A, and within the GMP Limit.

2.1.2 In fulfilling its obligations under this section, Design-Builder shall employ architects and engineers of the appropriate specialties for proper preparation of the Project drawings and specifications, including structural, mechanical, electrical, soils, civil and such other specialties (collectively, "Construction Documents") as are reasonably required. All such professional services shall be performed by appropriately State licensed personnel. Design-Builder takes responsibility for the proper performance of architectural and engineering services.

2.1.3 The Design-Builder shall develop project procedures in cooperation with MSA, which will be used as a guide for the management and coordination of the Project.

2.1.4 The Design-Builder shall produce Schematic Design documents per Section 2.22, Design Development documents per Section 2.23 and Construction Documents per Section 4.2.

2.1.5 The Design-Builder shall achieve economy in construction by simplification in design, standardization in materials and the like where appropriate.

2.1.6 If the Project exceeds the GMP Limit at any time during the Design and Pre-Construction Phase, the Project shall be redesigned as necessary to reduce the Project costs to an amount acceptable to MSA without additional compensation to the Design-Builder.

Section 2.2 Architect Services

2.2.1 Architect Basic Services

- (a) Architecture
- (b) Civil engineering
- (c) Landscape architecture
- (d) Structural engineering

- (e) Mechanical/plumbing engineering
- (f) Fire protection engineering
- (g) Electrical engineering

2.2.2 Architect Special Services

- (a) Land survey (per Section 2.10), existing utility survey(s), and test pitting, etc. (
- (b) Geotechnical engineering per Section 2.11
- (c) Telecommunications/IT systems design
- (d) LEED Consulting
- (e) Energy Efficiency and Sustainability Analysis per Section 2.1.8
- (f) Playing Surface Specialist or Consultant
- (g) Events/ Space Planning Consultant
- (h) Any other required consultants whose services are not included in Basic Services.

2.2.3 Specifications. Design specifications shall be prepared in accordance with the requirements set forth in the DGS Manual.

2.2.4 Utilities, Telecommunication, Infrastructure

- (a) Architect shall include with the design all utilities, telecommunications, and other infrastructure whether new or relocated for the Project from the Project to the source necessary to serve the Project.
- (b) Architect shall include full systems design to include work in existing buildings or structures on site, site investigation, and capacity studies.
- (c) Design shall be for systems for a completed and fully functioning facility(ies).

Section 2.3 Design-Builder Services

2.3.1 The Design-Builder shall advise the Architect on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing, and sequencing.

2.3.2 At a minimum, Design-Builder shall provide:

- a. Site utilization and logistics planning per Section 2.16.
- b. Constructability review services per Section 2.13.
- c. Scheduling services per Section 2.19.
- d. Cost modeling and estimating services per Section 2.14.
- e. Value engineering services per Section 2.20.
- f. Construction Documents Interdisciplinary Review services per Section 2.15.
- g. Bidding and GMP Preparation per Article 3.

Section 2.4 Codes, Standards and Regulations

2.4.1 In addition to the requirements set forth in Section 1.4.4 herein, the Design-Builder shall:

(a) Comply with the codes, standards, and regulations applicable to the Project, including but not limited to those required by the Maryland State Fire Prevention Code, Maryland Accessibility Code, and the Americans with Disabilities Act.

(b) Coordinate and incorporate requirements identified by the State Fire Marshal during all Phases of the Project.

2.4.2 The most restrictive requirement of the latest approved code or regulation shall apply in the case of conflicting requirements between these codes and standards.

Section 2.5 Access

2.5.1 The Design-Builder shall coordinate access to the site or other facilities if required, with the Client through MSA for a land survey, geotechnical services, and any other service requiring equipment to be brought to the site.

Section 2.6 Green Building

2.6.1 Although MSA is not seeking formal LEED Certification, the Project facilities' design shall adhere to the requirements of § 3-602.1 of the State Finance & Procurement Article, Maryland Annotated Code, and employ Green Building principles wherever practical in the design and construction using the LEED™ Silver rating as the minimum standard.

Section 2.7 Meetings

2.7.1 Design-Builder shall conduct regularly scheduled meeting with the Architect and other members of the Design-Build Team in addition to the meetings set forth in this Section.

2.7.2 Design Progress Meetings

(a) Regular Design Progress meetings shall be held every two (2) weeks unless otherwise agreed to by MSA.

(b) At MSA's request, there may be at least five (5) additional Design Progress meetings during the Design Phase.

(c) As required or deemed necessary by MSA, there shall be other meetings among the Design-Build Team, MSA, and the Client to review the design of civil, mechanical, electrical, fire alarm, telecommunications, security, and other systems and topics such as security and utilities.

2.7.3 Design review meetings shall occur after each design submission, and if necessary, to resolve comments made by the Project Team.

2.7.4 Design progress meetings as well as design review meetings may be held virtually, in Baltimore or at the Project location. The final format and location for each is subject to acceptance by MSA.

2.7.5. Other meetings during the Design Phase as needed to include but not necessarily limited to discussions regarding Value Engineering pursuant to Section 2.20.

2.7.6 All meetings under this Section 2.6 shall be conducted by the Design-Builder and documented within five working days following each meeting.

2.7.7 Design-Builder shall utilize the BIM Model (*see Section 2.17*) to communicate the current progress of design and construction at all meetings with MSA and the Client.

2.7.8 Public Meetings. At MSA's request, Design-Builder and other members of the Design Build Team shall attend and participate in public meetings and hearings.

Section 2.8 Printing and Reproduction

2.8.1 The cost of printing or reproduction of documents required for reviews, meeting presentations, cost estimating etc., of each design submission shall be borne by the Design-Builder.

2.8.2 The cost for any interim printing or reproduction that is required to obtain price information from other parties, or costs of any printing or reproduction for any other purpose during the Pre-Construction / Design Phase, including the Interdisciplinary Review shall be borne by the Design-Builder.

2.8.3 The cost for reproduction for bidding purposes shall be included in the Pre-construction fees. The Design-Builder shall make the Construction Documents easily available to interested trade contractors by setting up an FTP site or similar approach. It is the Design-Builder's responsibility to maximize participation of contractors by minimizing the cost of bidding to potential contractors, especially local contractors and small and MBE contractors.

Section 2.9 Design Report

2.9.1 Design-Builder or its designee shall provide a design report with each Design Phase submission to provide design information that does not appear on drawings or in specifications. The purpose of the design report is to enable the Project Team to understand design intentions, assumptions, direction and issues; and where necessary or appropriate, provide feedback and comments.

2.9.2 The Design Report shall be organized by discipline and system (e.g. a separate discussion of the fire alarm system from discussion of primary distribution) and include the following:

- (a) Project description, status, building code data;
- (b) Status of permits if applicable (in matrix format);
- (c) List of alternates, allowances, items requiring unit prices;
- (d) Description of systems, elements, materials, equipment, and design assumptions;
- (e) List of systems to be designed or engineered by Key Staff and Trade Contractors and suppliers, i.e. metal stairs, sprinkler;
- (f) Major issues, if any;
- (g) List of approved deviations from Project Criteria;
- (h) Calculations;
- (i) Identification of the individual on the Design-Build Team who reviewed the submitted documents for conformity to the Project Criteria, Contract Documents, GMP Limit, etc.

Section 2.10 Land Survey

2.10.1 Provide a land survey for the site and areas affected by the design including but not necessarily limited to the following:

- (a) Topography including contours and spot elevations
- (b) Property lines, building lines and setback requirements
- (c) Easements and rights-of-way
- (d) Legal description
- (e) Surface features and adjoining roads
- (f) Location, size, depth, inverts, and pressure (where applicable) of water, gas, steam, sewers, storm drains, manholes, catch basins, and other utilities, and location of fire hydrants
- (g) Location and elevation of power, street lighting, and telecommunications systems
- (h) Location and species of trees over 6-inch caliper
- (i) Any other information that the Design Builder determines is necessary for the design of the Project

Section 2.11 Geotechnical Services.

2.11.1 The Design-Builder shall provide the following geotechnical investigation and engineering services:

- (a) Borings, soil analysis, laboratory testing, infiltration tests, and geotechnical report.
- (b) Any other tests and information that the Design-Builder determines necessary for the design of the Project.
- (c) Meetings with the Project Team to review the geotechnical report and to discuss its recommendations and how they will be addressed in the facility design;
- (d) MSA shall be provided with a sealed and signed geotechnical report ;
- (e) Geotechnical testing and inspection services required during the Construction Phase will be provided by MSA. The Design-Builder is responsible for coordinating all activities associated with testing and inspection and for providing timely notice to MSA for upcoming testing and inspection requirements.

Section 2.12 Quality Control Program

2.12.1 Design-Builder with the Architect shall develop a Quality Control Program (the “**Quality Control Program**”) for the Project for use by MSA in its procurement of independent testing and inspection services.

2.12.2 The Quality Control Program shall be thorough and identify the specific testing and inspection requirements for the entire Project including the appropriate quantities for each test and inspection.

2.12.1 Additional costs associated with additional quality control measures that MSA in its sole discretion deems necessary, beyond those identified in the Quality Control Program, may be deducted from the GMP Contingency or the Design-Builder Fee for any amount not covered by the GMP Contingency.

Section 2.13 Constructability Review Services

2.13.1 Design-Builder shall notify the MSA in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting, or erroneous.

2.13.2 The Design-Builder shall provide organized constructability reviews of design submissions for the purpose of:

- (a) identifying errors and deficiencies, omissions, and coordination and interdisciplinary design conflicts; and
- (b) improving the design, minimizing Requests for Information (“RFI”), achieving efficient, cost effective construction, and eliminating added costs and negative effects on the quality of construction.

2.13.3 The Design-Builder shall review the design documents produced by the Architect at the conclusion of each design phase for constructability issues. Provide the following at the completion of each Constructability Review:

- (a) A complete report identifying the constructability issues; and
- (b) Marked up drawings and specifications as necessary to clearly convey the review comments and recommendations.

2.13.4 Design-Builder shall verify that the constructability comments and recommendations have been implemented or addressed in the Design Phase following each review.

Section 2.14 Construction Cost Modeling & Cost Estimating Services

2.14.1 Design-Builder shall develop a project cost model and shall update it with all required design phase submissions. Project cost models shall be based upon the Design-Builder’s own experience in the specific trade work market.

2.14.2 The Design-Builder shall coordinate with the Architect to clearly understand the design intent and to establish estimating assumptions prior to each cost model and estimate submission.

2.14.3 Within thirty (30) days from the date of the NTP for Design and Pre-Construction Services, the Design-Builder shall develop and submit to the MSA the Base Project Cost Model utilizing the available Project documents, including the Project Criteria.

2.14.4 The Base Cost Model, and all subsequent cost models, shall be organized and calculated in accordance with the GMP Calculation Form included in the Financial Proposal. The calculation shall include the applicable lump sum and percentage amounts identified in the Design-Builder’s Proposal accepted by MSA.

2.14.5 The Design-Builder’s Base Cost Model and each of its subsequent cost estimate submissions to MSA shall include a written description of the Design-Builder’s methodology for developing the specific estimate submitted.

2.14.6 Ten percent (10%) of the Cost of Work is expected to be identified as Add Alternates. Estimating for Add Alternates shall start as soon as Alternates are identified; and shall be complete and include the same level of detail and accuracy as the estimates for the base design at each design phase.

2.14.7 Construction Cost Estimates. Design-Builder shall provide a cost estimate at the conclusion of each design phase in accordance with DGS Manual Chapter 1 Article 5.

2.14.8 Cost estimates shall be submitted within ten (10) business days of receipt by MSA of the Schematic Design; and within fifteen (15) business days of the Design Development documents and all Construction Document submissions.

2.14.9 Design-Builder shall provide *cost comparisons* for current cost estimate and any prior cost estimates it provided to MSA.

2.14.10 In the event that the construction cost estimate exceeds the GMP Limit at *any* time, the Design-Builder shall collaborate with the Project Team to redesign the Project as necessary to maintain the Project Criteria and meet the GMP Limit without additional compensation to the Design-Builder.

2.14.11 (a) MSA reserves the right to retain the services of an independent estimator to provide independent estimates of any or all design submissions.

(b) Design-Builder shall manage the process of reconciling the two estimates, including meetings and negotiations with MSA and the Architect as necessary to explain and resolve questions and differences in any of the CSI divisions or trade packages.

(c) In the event of disparity between the two estimates, the Design-Builder shall work with MSA to reach a mutually agreed upon and acceptable cost estimate. Upon conclusion of this process, the two estimates shall be reconciled, and a revised Design-Builder cost model provided in hardcopy and electronic formats shall be submitted to MSA.

Section 2.15 Interdisciplinary Review

2.15.1 The Design-Builder shall arrange for an independent firm to conduct a thorough Interdisciplinary Review of the 70% Construction Documents – including drawings and specifications and shall provide its comments to MSA in writing.

2.15.2 Interdisciplinary Review methodology shall utilize a structured and industry recognized process.

2.15.3 The Interdisciplinary Review shall result in the following deliverables:

- (a) Marked-up sets of the Construction Documents and other documents prepared by Architect and other members of the Design-Build Team for submission;
- (b) A written description of each interdisciplinary issue noted as problematic, including background information;
- (c) Written report inclusive of Design-Builder's comments and redial recommendations. The costs to perform the Interdisciplinary Review shall be included in the Design-Builder's fee for Design and Preconstruction Services pursuant to Article 14.

2.15.4 MSA reserves the right to hire an independent Interdisciplinary Review firm. The Design-Builder shall ensure that comments from MSA's independent Interdisciplinary Review firm are incorporated into the 100% Construction Documents in a timely manner.

Section 2.16 Site Utilization and Logistics Planning Service

2.16.1 The Design-Builder shall anticipate and effectively address the impact of construction work on the areas surrounding the site (including roadway improvements) and the community. This includes both on-site construction activities, and off-site activities that impact the premises, nearby roads, or other off-site areas. The plan shall include items such as staging areas, parking, and transportation issues (for both occupant of surrounding buildings and construction workers), traffic considerations, security, deliveries to adjacent buildings, construction noise and vibration impact on surrounding buildings, and any other activity, regardless of its duration, which will occur or have an impact on the site or surrounding areas.

Section 2.17 Building Information Modeling Services

2.17.1 The Design-Builder shall provide Building Information Modeling (“**BIM**”) services using either a qualified outside firm or qualified in-house personnel.

2.17.2 At a minimum, the Design-Builder shall utilize BIM software to complete the drawings and develop a model (a “**BIM Model**”) to include the following disciplines:

- (a) architecture;
- (b) mechanical;
- (c) electrical;
- (d) plumbing; and
- (e) structural engineering.

2.17.3 The Design-Builder shall assist in the development of a “BIM Implementation Plan” which will outline the proposed plans for BIM Model use, and how it will be coordinated with all parties.

2.17.4 The Design-Builder shall employ coordinating software accessible to and by all parties.

2.17.5 The Design-Builder shall be provided full access to the digital model, and shall work with, and coordinate the model with other members of the Design-Build Team as appropriate and MSA.

2.17.6 At completion of the Construction Document Phase, the BIM Model shall meet the requirements of Level of Development (a “**LOD**”) 300, as defined in AIA document G202-2013

2.17.7 The BIM Model must include the follow elements:

- (a) substructure
- (b) shell
- (c) interiors
- (d) services

2.17.8 BIM Modeling services shall include:

- (a) Logistics and impacts outside the Limit of Disturbance
- (b) Value Engineering-cost and alternative studies
- (c) Virtual mock-ups
- (d) Labor planning and asset management

- (e) Spatial Coordination: Collision/Clash detection
- (f) Trade Contractor/Subcontractor scope definition

2.17.9 The Design-Builder shall utilize the BIM Model to communicate the current progress of design and construction at all meetings with MSA and the Client.

2.17.10 The Design-Builder shall start performing spatial coordination including collision/clash detection exercises as early as possible and shall complete the last Pre-Construction Phase collision detection prior to the completion and submission of the 70% Construction Documents.

Section 2.18 Life Cycle, Building Energy Efficiency and Sustainability

2.18.1 Life Cycle, Building Energy Efficiency and Sustainability Report. The Design-Builder shall provide a Life Cycle, Energy Efficiency and Sustainability Report which identifies all energy efficient and sustainability related features, components and strategies incorporated into the design and construction of the facility. The report shall elaborate on how the features, components and strategies align with those identified in the Maryland Climate Solutions New Act of 2021 (the “Act”). The report shall also elaborate on the features, components and strategies identified in the Act that are not included in the design or construction and provide an explanation as to why they are not feasible at the present time and how they may be pursued in the future.

Section 2.19 CPM Scheduling Services (Design and Preconstruction)

2.19.1 Design-Builder shall provide CPM scheduling services during the Design and Pre-Construction Phases as described in Exhibit I.

Section 2.20 Value Engineering Services

2.20.1 Design-Builder shall provide value engineering (“**Value Engineering**”) services and offer time and/or cost savings suggestions and best value recommendations to the Project Team. All recommendations shall be fully reviewed with and approved by MSA prior to implementation.

2.20.2 Value Engineering shall result in a design that is most effective in initial cost as well as long term operational cost relative to issues of energy use and facility maintainability. The goal is to achieve a balance between costs, aesthetics, and function.

2.20.3 Value engineering studies shall be continuous as the design is developed and shall be provided on a timely basis and within the design schedule. ‘**Continuous**’ means that, in addition to the Value Engineering studies required at the end of each design phase, the Design-Builder shall assist the Architect in evaluating the costs of elements of the design for the purpose of developing timely cost data during Design Phases.

2.20.4 Value Engineering shall be conducted throughout the design process to evaluate design alternatives for the purpose of identifying time and/or cost saving. The Design-Builder shall provide time and cost analysis for alternate building design options, such as building materials, mechanical systems, and other options as may be proposed by the Architect and methods of construction and other options as may be proposed by the Design-Builder.

2.20.5 Design-Builder shall conduct a Value Engineering study at the completion of each Design Phase utilizing the design submissions and Construction Documents produced by the Architect. This study shall include, but not be limited to the following:

- (a) Review design submissions and Construction Documents. This review process shall include a detailed review of all Construction Documents including drawings, specifications, studies, test reports, and technical and design reports submitted by the Architect.
- (b) Collaborate in person as needed with the Architect and the Project Team to generate ideas and develop solutions to issues.
- (c) Develop Value Engineering concepts for consideration at the session (both the Design-Builder and the A/E will concurrently be conducting these activities).
- (d) Provide a written Value Engineering report and submit to MSA within two (2) weeks of the initial meeting under (b) above, and subsequent Value Engineering meetings. This report shall include a summary of Value Engineering items, detailed written pro/con evaluation of options, and applicable time and/or cost savings.
- (e) Conduct a formal presentation of the study to the MSA and Client.
- (f) Provide a revised report documenting the accepted and rejected items.

Section 2.21 Schematic Design Phase

2.21.1 Design-Builder shall prepare and submit schematic design (“**Schematic Design**”) documents in accordance with Chapter II, Article 10 of the DGS Manual.

2.21.2 Schematic Design Kick-off Meeting and Follow-ups

- (a) Immediately following the NTP for Design and Preconstruction, the Design-Builder and each member of the Design-Build Team shall attend a Schematic Design kick-off meeting to discuss and develop the Project’s design philosophy and strategy.
- (b) The Design-Builder and Design-Build Team shall use this opportunity to explain its interpretation of the Project priorities and goals, and its strategy for accomplishing these.
- (c) The Design-Builder shall meet with MSA as necessary to discuss issues affecting the Project’s design or construction requirements and to present findings and solutions.

Section 2.22 Schematic Design Document Submission

2.22.1 Design Concepts. The Design-Builder shall present a minimum of three (3) design concepts which shall include several elevations, axonometric views, and perspective for each to allow proper understanding, review and approval by MSA and Client.

2.22.2 Site Plan. Provide an analysis of site characteristics and design requirements on a site plan. The site plan shall show existing and proposed utilities, roads, walks, grades, other structures and site features, and the relationship of the Project (as completed) to the anticipated future improvements which are not a part of the Project.

2.22.4 Construction Documents. Provide a list of final construction documents Design-Builder anticipates will be required.

2.22.5 Cost Estimates.

- (a) Pursuant to section 2.14 herein, Design-Builder shall provide a cost estimate in accordance with DGS Manual Chapter 1, Article 5(K).
- (b) The Design-Builder shall continue to the next phase of the design process if the cost estimate is within Project Construction Cost Limit.
- (c) If the cost estimate exceeds the budget the Design-Builder shall redesign the Project to meet the budget and resolve all comments to MSA's satisfaction prior to moving onto the Design Development Phase.

2.22.6 CPM Schedule. Submit the Initial Preconstruction CPM Schedule per Section 5.2 of Exhibit M.

Section 2.23 Design-Development Phase

2.23.1 Design-Builder shall submit design development (“**Design Development**”) documents in accordance with Chapter 11, Article 11 of the DGS Manual.

2.23.2 Design Development Kick-off Meeting. Immediately following the NTP for Design Development, the Design-Builder and each member of the Design-Build Team shall attend a Design Development kick-off meeting to discuss further development of the Project documents; review the submission requirements set forth in the DGS Manual; and to discuss any issues related to the creation of Design Development documents.

2.23.3 Incorporate comments on the Schematic Design document submission into the Design Development documents.

2.23.4 Construction Documents. Provide a list of final construction documents Design-Builder anticipates will be required.

2.23.5 Submit the initial Quality Control Program pursuant to section 2.12 herein, for review and comment.

2.23.6 Submit the initial site utilization and logistics plan prepared by the appropriate member of the Design-Build Team in accordance with Section 2.16.

2.23.7 Submit the Life Cycle, Building Energy Efficiency and Sustainability report(s) in accordance with Section 2.18.

Section 2.24 Cost Estimates

2.24.1 Pursuant to section 2.14 herein, Design-Builder shall provide a cost estimate in accordance with DGS Manual Chapter 1, Article 5(L).

- (a) If the cost estimate exceeds the GMP Limit, the Design-Builder shall redesign the Project to meet the budget and resolve all comments to MSA's satisfaction prior to moving on to the next phase of design

2.24.2 CPM Schedule. Submit the updated Preconstruction CPM Schedule per Section 5.3 of Exhibit M.

Section 2.25 Construction Document Phase

2.25.1 Construction Documents (“**Construction Documents**”) must be prepared and submitted in accordance with Chapter II, Article 12 of the DGS Manual.

2.25.2 Construction Documents Kick-off Meeting. Immediately following the NTP for Construction Documents, the Design-Builder and each member of the Design-Build Team shall attend a kick-off meeting to discuss further development of the Project documents; review the submission requirements set forth in the DGS Manual; and to discuss any issues related to the creation of the Construction Documents.

Section 2.26 Seventy Percent (70%) Construction Documents

2.26.1 (a) Construction documents must be submitted to MSA for review upon 70% of their completion (the “**70% Construction Documents**”). The 70% Construction Documents shall be complete and coordinated documents.

(b) The 70% Construction Document submission shall consist of six (6) copies of all drawings and specifications required for approval by MSA. Provide four (4) full size, two (2) half size, and five (5) complete electronic sets.

(c) Submit 70% Construction Documents for Interdisciplinary Review in accordance with section 2.15.

(d) Incorporate into the 70% Construction Documents comments from MSA, the Interdisciplinary Reviews and the Constructability Review pursuant to Section 2.13.

(e) Unless agreed to otherwise, the 70% Construction Documents approved by the MSA will be the bid set of Construction Documents to develop the GMP Proposal.

2.26.2 Submit the final Quality Control Program (*see Section 2.12*)

2.26.3 Submit the final Site Utilization and Logistics Plan in accordance with Section 2.16.

ARTICLE 3 BIDDING and GMP DEVELOPMENT

Section 3.1 Generally

3.1.1 Unless agreed to otherwise, the Bidding and GMP Development Phase will start upon MSA’s approval of the 70% Construction Document submission, the associated cost estimate and the Pre-Construction CPM Schedule for Bidding and GMP Development.

Section 3.2 Trade Packages

3.2.1 Design-Builder shall use the approved Construction Documents to prepare scopes of services for each trade package. Each scope of service shall include, but not limited to the approved Preconstruction CPM Schedule for Bidding and GMP, anticipated number of work hours necessary for coordination between or among trades, outages and any other conditions that may impact the execution of the Work.

3.2.2 In addition to Section 3.2.1, Design-Builder shall ensure that the scope of work under each trade packages is consistent with the requirements set forth in Section 4.3. Design Builder shall verify that none of the scopes of work include items covered under the Design-Builder General Conditions or Design-Builder fees.

3.2.3 Design-Builder shall solicit a minimum of three (3) competitive bids on all trade packages and materials for each GMP Proposal submission. Bids on trade packages and materials are “**GMP Trade Bids.**”

Section 3.3 Bidding

3.3.1 Design-Builder may not begin bidding until plans, specifications and drawings have been approved by the MSA. MSA’s approval is only to for the limited purpose of checking for conformance with information given and the design concept expressed in the design development documents. MSA’s review of such documents is not conducted for the purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substituting instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Contract Documents

3.3.2 The Design-Builder and applicable members of the Design Team shall conduct all pre-bid meeting(s) and provide minutes of the meetings.

3.3.3 The applicable engineers including civil, structural, mechanical, and electrical shall attend scope review meetings to review bids.

3.3.4 The Design-Builder shall provide explanations and interpretations of the documents in writing, to include drawings as necessary.

3.3.5 The bid documents shall include the Design-Builder’s documents and other documents produced by the Design-Build Team and documents provided by MSA.

3.3.6 The Architect shall provide MSA with analysis and evaluation of Design-Builder’s requests for substitutions during bidding, and if necessary, during construction.

3.3.7 The Design-Builder is responsible for obtaining clarification of all questions it has with respect to the meaning or intent of the Contract Documents; and conflicts between items or requirements contained in the Contract Documents prior to submission of the GMP Proposal.

3.3.8 Design-Builder’s failure to obtain any such clarification(s) shall give the MSA the absolute right in its discretion, to direct that the Work proceed by any method indicated, specified, or required by the Contract documents.

3.3.9 MSA’s exercise of its right under 3.3.8 above shall not be grounds for the Design-Builder to claim additional costs or expenses.

3.3.10 The terms of this Section 3.3 notwithstanding, the Design-Builder shall be deemed to have obtained all clarifications to its questions and resolution of conflicts which were known or should have been known prior to its submission of the GMP Proposal at the conclusion of the preconstruction phase.

3.3.11 General Conditions: As part of the GMP Preparation and negotiation activities, the Design-Builder and MSA will negotiate a fixed fee for General Conditions.

Section 3.4 Submission of GMP Proposal

3.4.1 The GMP Proposal shall be provided to MSA within the timeframe identified in the Design-Builder's Proposal.

3.4.2 The GMP shall not exceed the Guaranteed Maximum Price Limit.

3.4.3 The GMP shall be organized and calculated in accordance with the GMP Calculation Form included in the Proposal. The calculation shall include the applicable lump sum and percentage amounts identified in the Design-Builder's Proposal accepted by MSA.

3.4.4 The GMP is generally comprised of the following:

- a. Cost of Work per Article 15
- b. General Conditions per Article 16
- c. GMP Contingency per Section 18.3
- d. Design-Builder Fee per Article 17
- e. Design Builder Allowances & Holds per Section 18.4
- f. Owner Contingency & Allowances per Sections 18.7 and 18.8

3.4.5. The GMP Proposal submission shall include all required forms, proposal bond, certifications, Final Preconstruction CPM Schedule per Section 5.5 of Exhibit M and completed MBE attachments.

Section 3.5 GMP / Project Cost Adjustments

3.5.1 After review by MSA of the selected Trade Bids, Design-Builder shall submit its GMP Proposal (the "**GMP Proposal**") which includes the GMP Trade Bids to MSA.

3.5.2 In the event that the total projected construction costs exceed the GMP Limit, MSA reserves the right to direct the Design-Builder to work with the Architect to redesign the Project as necessary to maintain the Project Criteria and meet the GMP Limit.

3.5.3 With input from MSA, the Design-Builder and the members of the Design-Build Team as appropriate shall work cooperatively with the Project Team to make agreed upon changes to the Construction Documents (the "**Amended Construction Documents**") necessary to achieve the required reduction in cost.

3.5.4 The Design-Builder shall submit an amended GMP Proposal (the "**Amended GMP Proposal**") to MSA reflecting the changes.

3.5.6 Notwithstanding anything to the contrary in this Contract, Design-Builder shall perform the work set forth in this section without additional compensation.

3.5.7 Design-Builder's detailed GMP Proposal will be reviewed by the Architect and MSA - and compared with the GMP Limit.

- (a) MSA, the Architect, and Design-Builder shall meet as necessary to resolve differences between the GMP Limit and the Design-Builder's GMP Proposal, and other related issues.
- (b) Design-Builder shall work with the Architect and MSA to reach a mutually acceptable GMP.

Section 3.6 GMP Amendment to Contract

3.6.1 Acceptance of Design-Builder's GMP Proposal shall be in MSA's sole discretion. If MSA and Design-Builder fail to agree on the GMP, the Contract may be terminated in accordance with Article 22 (termination for convenience).

3.6.2 Upon MSA's acceptance of the GMP Proposal (and any amendments thereto), and receipt of approval from the required governmental authorities including the MSA Board of Directors and the Maryland Board of Public Works this Agreement will be amended to include the terms of the GMP Proposal. At this point, the Design-Builder will provide Construction Services.

ARTICLE 4 CONSTRUCTION SERVICES

Section 4.1 Construction Phase

4.1.1 The Construction Phase will commence upon the Design-Builder's receipt of NTP with Construction from MSA.

4.1.2 Generally, the Design-Builder shall:

(a) Supply all services (including architectural, engineering, and construction) labor, materials, supplies and equipment; and utility consumption not requiring permanent local utility company or direct Project Site connectivity (i.e. portable equipment), necessary for the proper and complete performance of the Work, including items that are consistent with and reasonably inferred by the Contract Documents.

(b) Assume responsibility for the entire Work, including the satisfactory performance of each of the Trade Contractors and each member of the Design-Build Team.

(c) Comply with all of the terms and conditions of the Contract Documents.

(d) Provide construction administration services through its Design Team.

(e) Prepare and maintain the Project CPM Schedule and Reports in accordance with Article XX.

Section 4.2 100% Construction Documents

4.2.1 Upon receipt of NTP with Construction, the Design-Builder shall advance the design to 100% Construction Documents.

4.2.2 The Interdisciplinary Review firm shall review the 100% Construction Documents to verify that all comments from the review of the 70% Construction Documents have been addressed. MSA shall be notified in writing of any unaddressed comments or issues.

4.2.3 The Design-Builder shall incorporate any corrections identified in the special coordination and collision/clash detection exercises into the 100% Construction Documents.

4.2.4 The 100% Construction Document submission shall consist of six (6) copies of all drawings and specifications required for approval by MSA. Provide four (4) full size, two (2) half size, and five (5) complete electronic sets.

Section 4.3 Trade Contractors, Subcontractors & Suppliers

4.3.1 Upon receipt of NTP with Construction, the Design-Builder shall commence final negotiations and award of contracts to Trade Contractors, Subcontractors and Suppliers.

4.3.2 In General

The Design-Builder is fully responsible to MSA and the State for the acts and omissions of its Design Build Team, Trade Contractors, subcontractors and suppliers at any tier, and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.

4.3.3 Nothing contained in the Contract Documents shall create any contractual relation between the Design Build Team, any Trade Contractor, Subcontractor or Supplier at any tier and MSA or the State, and nothing in the Contract Documents is intended to make any such entity a beneficiary of the contract between Owner and the Design-Builder. No Trade Contractor, Subcontractor or Supplier at any tier shall have or make any claim or cause of action directly against the Client, Owner or the State.

4.3.4 Trade Contractors, Subcontractors and Suppliers shall be selected by competitive bidding as provided in Section 9.4 below.

4.3.5 MSA shall have the right to review the form of all Trade Contracts, Subcontracts or agreements with Suppliers which shall incorporate the terms and conditions of the Contract Documents.

4.3.6 Design-Builder shall not make any changes to any of its Trade Contracts, Subcontracts or agreements with Suppliers without prior written approval by the Owner, which may be given or withheld at the sole discretion of Owner.

4.3.7 Design-Builder shall deliver to MSA a copy of each executed Trade Contracts, Subcontracts or agreements with Suppliers, and any changes, modifications, additions or amendments with the Project Progress Report (*see Exhibit E*). The Owner shall not be a party to any Trade Contracts, Subcontracts or agreements with Suppliers.

Section 4.4 Exceptions

4.4.1 Under certain circumstances (i.e. a Trade Contractor's breach or the lack of available qualified contractors), the Design-Builder may recommend to Owner that Design-Builder employ its own work force to perform certain Trade Contractor work.

4.42 If the Design-Builder recommends and Owner approves Design-Builder employing its own work force *during* the bid process, Design-Builder shall submit a bid for the subject work in the same format as required of other bidders.

4.43 If the Design-Builder makes a recommendation after an award to a Trade Contractor, Subcontractor or Supplier and during the course of the Project Work, (i.e. the Trade Contractor is in breach of contract), the Design-Builder shall establish to Owner's satisfaction that Design-Builder's price for substitution with its own work force is competitive for the type of work at issue.

4.44 In no event shall work be started by the Design-Builder or its employees, agents, contractors, or other substitute for the Trade Contractor, Subcontractor or Supplier without prior written approval of the Owner. Owner's approval shall include the method of determining the payment to the Design-Builder for such work, however it shall not entitle the Design-Builder to an increase in the Cost of the Work.

4.45 All such work shall be performed in accordance with the Contract Documents.

Section 4.5 Procurement & Contracts

4.5.1 Design-Builder shall receive no fewer than three (3) bids for any Work to be performed by a Trade Contractor, Subcontractor or Supplier.

4.5.3 MSA shall have the right to review the form of all Trade Contracts, Subcontracts or agreements for the purchase of materials which shall incorporate the terms and conditions of the Contract Documents.

4.5.4 Design-Builder shall not award any Trade Contracts, Subcontracts or agreements for the purchase of materials in excess of \$10,000 without the prior written approval of the MSA. Design-Builder's recommendation for contract award shall include a tabulation of qualified and financially responsible bidders or suppliers with their bids. The bids shall be sufficiently detailed for MSA to compare.

4.5.5 The Design-Builder must provide a written explanation to MSA for any Trade Contractor, Subcontractor or Supplier recommended for award who was not the lowest bidder.

4.5.6 Design-Builder shall award the Trade Contracts, Subcontracts or agreements for the purchase of materials after the MSA and the Design-Builder review the bids or proposals.

4.5.7 Buy-out savings resulting from negotiations and award to Trade Contractors, Subcontractors and Suppliers shall increase GMP Contingency.

Section 4.6 Prompt Payment of Trade Contractors, Subcontractors and Suppliers

4.6.1 This Agreement and all subcontracts issued under this Agreement are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In this Section 4.5, the terms "undisputed amount" "prime contractor" "contractor" and "subcontractor" have the meanings stated in COMAR 21.10.08.01.

4.6.2 A contractor shall promptly pay its subcontractors any undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.

4.6.3 If a contractor fails to make payment within the period prescribed in Section 4.5.2, a subcontractor may request a remedy in accordance with COMAR 21.10.08.

4.6.4 A contractor shall include in its subcontracts for work under this Agreement, wording that incorporates the provisions, duties, and obligations of this Section 4.5, State Finance and Procurement Article §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

Section 4.7 Retainage in Payments to Trade Contractors, Subcontractors and Suppliers

4.7.1 The Design-Builder may not retain from any payment due to a Trade Contractor, Subcontractor or Supplier a percent of the payment greater than the percent of retainage specified in Section 21.5.

4.7.2 A Trade Contractor, Subcontractor or Supplier at any tier may not retain from any payment due to a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the Trade Contractor, Subcontractor or Supplier.

4.7.3 However, the Design-Builder and/or a Trade Contractor, Subcontractor or Supplier are not prohibited by this Section 4.6 from withholding an amount in addition to retainage if the Design-Builder or subcontractor determines that a Trade Contractor, Subcontractor or Supplier's performance under the Trade Contractor, Subcontractor or Supplier provides reasonable grounds for withholding the additional amount.

4.7.4 The Design-Builder and each Trade Contractor, Subcontractor or Supplier at any tier shall include, in all of their contracts for work called for by this Agreement, wording that incorporates the provisions of this Section 4.6.

Section 4.8 Trade Contract – Contract Provisions

4.8.1 In addition to any other required term or provision contained herein, the Design-Builder must bind every Trade Contractor, Subcontractor or Supplier - and will see that every Trade Contractor, Subcontractor or Supplier 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 the MSA. The Design-Builder must include in any Trade Contracts, Subcontracts or agreements with Suppliers the following provisions:

4.8.2 Trade Contractor, Subcontractor or Supplier agrees to be bound to the Design-Builder by the terms of the Contract between the Design-Builder and MSA, and to assume toward it all obligations and responsibilities that the Design-Builder, by those documents assumes towards MSA.

4.8.3 Trade Contractor agrees to submit to the Design-Builder applications for payment in such reasonable time as to enable the Design-Builder to apply for payment under Section 20.1.

4.8.4 The provisions required by Sections 4.6 and 4.7; and if applicable, the prevailing wage provisions on **Exhibits E and E-1** attached hereto.

4.8.5 Each contract shall be assignable to MSA at MSA's election in the event the Design-Builder is terminated or fails to perform its obligations under the Contract Documents. MSA may assign its rights under those contracts and this Agreement to any other unit or instrumentality of the State without notice to the Trade Contractor, Subcontractor or Supplier.

4.8.6 The Design-Builder shall have the right to require the Trade Contractor, Subcontractor or Supplier to accelerate performance of its work at its own cost (and not as a Cost of the Work) as necessary to satisfy the time requirements set forth in the Project CPM Schedule.

4.8.7 The provisions of this Section 4.7 notwithstanding, unless there is an assignment of contract pursuant to this Section the Design-Builder shall be solely responsible for all Trade Contractors, Subcontractors and Suppliers and neither MSA nor the Architect shall have privity of contract with, or obligations or liabilities to the Trade Contractor, Subcontractor or Supplier.

Section 4.9 Prevailing Wage Requirements

4.9.1 If this Contract is subject to Prevailing Wage pursuant to State Finance & Procurement Article, Maryland Code Ann. Title 17 subtitle 2 and COMAR 21.11.11.01 et seq., the Design-Builder shall comply with all Prevailing Wage requirements set forth in **Exhibits E and E-1** attached hereto titled "Prevailing Wage Instructions for Design-Builder."

Section 4.10 Materials

4.10.1 Generally. The Design-Builder in accepting the Contract, is assumed to be thoroughly familiar with the services and materials required and their limitation as to use and requirements for connection, setting, maintenance and operation. Whenever an article or material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in the Contract Documents shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.

4.10.2 Approval. The Design-Builder through its Architect is responsible for assuring all materials conform with the Contract Documents, quality, design, color, etc. MSA's approval of a Trade Contractor, Subcontractor or Supplier does not constitute approval of a material which is other than that included in the Contract Documents.

4.10.3 New Materials. Unless otherwise specified, all materials shall be new. Old or used materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the MSA.

4.10.4 Samples. The Design-Builder shall furnish for MSA's approval all samples as directed and materials used shall be consistent with the approved samples.

4.10.5 Proof of Quality. The Design-Builder shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. It shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in Section 2.4.

4.10.6 Standard Specifications. When no specification or code is cited or otherwise applicable and the quality, processing, composition, or method of installation of an item, or is only generally referred to, then:

(a) For items not otherwise specified below, the applicable specification shall be the latest edition of the applicable American Society for Testing Materials (ASTM) specification.

(b) For items generally considered as plumbing and those items requiring plumbing connections, the applicable specification shall be the applicable portions of the National Standard Plumbing Code, as adopted by the State of Maryland.

(c) For items generally considered as heating, refrigerating, air-conditioning or ventilation, the applicable specifications shall be the applicable portions of the latest edition of the Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)

(d) For items generally considered as electrical, the applicable specifications shall be the applicable provisions of the International Building Code and the National Electric Code, as adopted by the State of Maryland.

(e) For items generally considered as fire protection, the applicable specifications shall be the applicable sections of the State Fire Prevention Code and the National Fire Protection Association Code, as adopted by the State of Maryland.

(f) For items generally considered energy conservation, the applicable provisions of the International Energy Conservation Code as adopted by the State of Maryland.

(g) For items generally considered accessibility, the most stringent applicable provisions of the American Disabilities Act (ADA) or the Maryland Accessibility Code (MAC), as adopted by the State of Maryland.

Section 4.11 Dimensions

4.11.1 The Design-Builder shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into constructed conditions at the job shall be taken at the job site and are the sole responsibility of the Design-Builder. Whenever a stock size manufactured item or piece of equipment is specified or is proposed by the Design-Builder to be furnished, it is the responsibility of the Design-Builder to determine the actual space requirements for setting or entrance to the setting space. No additional cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item or equipment furnished by the Design-Builder.

Section 4.12 Patents, Copyrights, Trade Secrets and Protected Matters

4.12.1 The Design-Builder assumes the risk that any materials, equipment, processes, or other items required under the contract or furnished by the Design-Builder Team (including the CPM software furnished to MSA under Section 9.1.5) are subject to any patent, copyright, trademark, trade secret or other property right of another. The Design-Builder 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. Design-Builder 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 and the State from loss or expense on account thereof.

4.12.2 When an item specified by MSA or furnished by the Design-Builder infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Design-Builder will, at his option, and at no additional cost to MSA or the State, (i) procure for MSA the right to use the item; (ii) replace the item with an approved, non-infringing equal; or (iii)

modify the item so it becomes non-infringing and performs substantially the same as the original item.

Section 4.13 Substitutions

4.13.1 Should the Design-Builder desire to substitute another material for one or more specified by name, it shall apply in writing for such permission and include the amount of any credit or extra costs associated with the substitution.

4.13.2 Any materials which the Design-Builder proposes be substituted, and the materials it proposes to use as substitutions, require MSA's written approval. The Design-Builder shall provide its proposal (including the amount of any credit or extra costs associated with the substitution) in writing which clearly states that it is a proposed substitution and provides evidence that the substitution is of at least equal quality for the substituted material. Any approval (regardless of form or method) of a substitute material by the Architect, will not be binding on MSA if the Design-Builder has not clearly specified and designated such material as a "substitute" and the Design-Builder shall not be released from any of its contractual obligations.

Section 4.14 Non-Conformance of Work

4.14.1 If the Design-Builder observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Design-Builder to the responsible party (i.e. Trade Contractors or Subcontractors) with a copy to the MSA and the Architect.

Section 4.15 Quality of Work and Standard of Care

4.15.1 The Work performed shall be consistent with (i) the standards and construction practices observed by Design-Builders of comparable stature to Design-Builder on projects of similar size and importance; and (ii) the interests of MSA relating to quality, timely completion, safety and economics.

4.14.2 The Work shall be performed and executed in a workmanlike manner by qualified and efficient workers, and in conformance with the Contract Document. Design-Builder shall be solely responsible for all architectural design, engineering, construction means, methods, techniques, sequences and procedures relating to the proper execution of the Work.

Section 4.16 Coordination of the Work

4.16.1 The Design-Builder has full responsibility for the control and execution of the Work. The Design-Builder shall:

(a) Supervise and direct the work of its Design-Builder Team, Trade Contractors, Subcontractors and Suppliers including providing administrative management and related services as required to coordinate the Work with the activities and responsibilities of the Trade Contractors and the MSA to complete the Project in accordance with the MSA's objectives of cost, time, quality, and safety.

(b) Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.

(c) Coordinate with the MSA or MSA's agent(s) the scheduling, receipt, storage, distribution, installing and clean-up of any FF&E items.

(d) Coordinate and take all appropriate action with respect to the disruption of utilities and other such services to all buildings so as to minimize or avoid damage or interference with the normal use of the buildings and business invitees.

(e) Coordinate with the MSA to minimize disruption to operations of existing facilities as applicable.

Section 4.17 Coordination with Utilities

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

4.17.2 It is understood and agreed that the Design-Builder's GMP has considered all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage due to any interference from said utility appurtenances, the operation of moving them, the making of new connections thereof if required by the Contract Documents, or by other requirements of the utility company.

4.17.3 At any point where the Design-Builder's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Design-Builder.

4.17.4 In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service.

4.17.5 The Design-Builder shall:

(a) coordinate any Work required by private or public utility companies to provide utilities to the Project, including but not limited to relocation of utilities as required by the Project;

(b) coordinate all permanent utilities (i.e. electricity, gas, telephone, cable) required for the performance of the Work; And

(c) notify and coordinate with any and all utility location services required by law or otherwise, i.e. Miss Utility.

Section 4.18 Submittals

4.18.1 The Design-Builder shall:

(a) Establish and implement procedures for expediting the processing of product data, samples and other submittals consistent with the Contract Documents and Construction Documents.

(b) Provide the MSA with a set of Coordinated Shop Drawings from its Design Build Team, Trade Contractors, Subcontractors and Suppliers and other necessary documentation as required by the Specifications.

(c) Within 30 days of issuance of the NTP, prepare in a format and with a level of detail acceptable to the MSA, a submittal log which incorporates the activities of the Design Build Team, and Trade Contractors on the Project, including a master registry of all submittals for the Project, with weekly updates to be distributed at the progress meeting.

Section 4.19 Land Survey

4.19.1 In addition to the Location Survey requirements in Section 2.10, Design-Builder shall

- (a) Provide new monuments at all property corners at completion of the Construction Phase.
- (b) Provide sealed and signed original drawings and AutoCAD files to MSA upon completion of the survey.
- (c) Provide a certified survey of the site upon completion of the Construction Phase. The final metes and bounds shall be submitted as part of the close-put documents.

Section 4.20 Trade Contractor As-Built Drawings

4.20.1 As-built drawings are to be prepared by all Trade Contractors. The Design-Builder shall monitor their preparation on at least a monthly basis – or more often if necessary and shall take appropriate corrective action when as-built drawings are not being properly updated. The Design-Builder shall forward as-built drawings to the Architect upon completion of the Project for the Architect’s preparation of record drawings.

ARTICLE 5 SAFETY, SECURITY & PERMITS

Section 5.1 General Provisions

5.1.1 The Design-Builder shall provide and maintain, and continuously maintain adequate protection of all Work and materials, protect the property from injury or loss arising in connection with this Agreement and adequately protect adjacent property as provided by law and the Contract Documents.

Section 5.2 Safety Precautions, Barricades & Warning Signs

5.2.1 The Design-Builder shall:

(a) Take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws, building codes and conditions of building permits (collectively “**Law**”), to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed, including but not limited to: Maryland Occupational Safety and Health (MOSH), the Maryland Department of Transportation, Maryland Department of Natural Resources (including those laws, codes or regulations regarding

protection for existing vegetation, forestry, wildlife and wetlands); and the Maryland Department of Health (for approval of kitchen and lavatory facilities).

(b) Provide and erect and properly maintain at all times suitable temporary sidewalks, closed passageways, fences, or other structures as required by Law and the Contract Documents, or as required by the conditions and progress of the work in such a way as to leave unobstructed traffic at intersections, access to buildings, the Project site, access to fire hydrants and any other requirements imposed by Law.

(c) Provide and maintain all lights and security needed to maintain safety and security for personnel, the public and property, whether or not required by Law or the Contract Documents

(d) Oversee, maintain and protect all utility accoutrements (e.g. preventing water pipe ruptures due to freeze/thaw conditions and sporadic usage).

(e) Erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public; post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

(f) Provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to ensure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time; and provide for the adequacy and safety of all scaffolding and hoisting equipment.

(g) Designate a Competent Person whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the MSA or its designee by the Design-Builder.

(h) Submit drawings of sidewalk passageways to the extent required by Law or the Contract Documents to the Architect and MSA for review and comment.

(i) Remove any temporary protection upon completion of the Work or as otherwise directed by the MSA.

5.2.2 The Design-Builder also has primary responsibility for all Project safety programs, shall require and review Project-specific safety programs developed by each of the Trade Contractors, and shall observe, at a minimum the safety programs required in the Contract Documents.

5.2.3 All fences, signposts, light posts, etc. shall be painted and maintained in an attractive manner and shall be subject to the approval of the MSA.

Section 5.3 Emergencies

53.1 In an emergency affecting the safety of persons or property, the Design-Builder shall act to prevent threatened damage, injury or loss. The Cost of the Work and the Substantial Completion Date shall not be adjusted except as provided in Section 12.4.

53.2 If the MSA determines that an emergency exists that threatens the safety of persons or property, and the Design-Builder or responsible Trade Contractor does not immediately take corrective action, the MSA shall have the right to: (a) order the affected work be stopped; and (b) take any necessary corrective action, including hiring of experts or professionals as MSA deems

necessary under the circumstances. All costs incurred in so doing shall be charged to the Design-Builder and shall not increase the Cost of the Work.

Section 5.4 Building Permit

5.4.1 The Design-Builder shall apply for and obtain the building permits. The Design-Builder will be reimbursed for the actual cost of the building permit by MSA.

Section 5.5 Permits, Licenses, Certificates and Fees

5.5.1 The Design-Builder shall secure and pay for all governmental fees, permits, licenses, certificates, and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement for construction, and which are legally required at the time the GMP is provided to the MSA.

5.5.2 This Section 5.3 includes by way of example and not limitation, trade permits, permits required by federal, State or local law for the removal of hazardous materials, and use and occupancy certificates.

5.3.3 Pay all fees, post all required deposits, including those required by utility companies.

**ARTICLE 6
SPECIAL CONSULTANTS, INSPECTIONS & CHECKLISTS**

Section 6.1 Special Consultants and Testing Laboratories

6.1.1 (a) If special consultants or testing laboratories are included in the Work or, should have been reasonably anticipated by the Design-Builder as being necessary for successful prosecution of the Work, then Design-Builder shall in consultation with the MSA, provide appropriately licensed and qualified surveyors, special consultants and testing laboratories, and shall coordinate their services consistent with the provisions of the Contract Documents. The Design-Builder shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measured taken. This information shall be included in the Progress Report. The Design-Builder shall coordinate any inspections which may be required by any government agencies or the MSA.

(b) If special consultants or testing laboratories were unanticipated and not reasonably anticipated by the Design-Builder, the Design-Builder shall notify the MSA and in consultation with the MSA, provide appropriately licensed and qualified surveyors, special consultants and testing laboratories, and shall coordinate their services consistent with the provisions of the Contract Documents. The Design-Builder shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measured taken. This information shall be included in the Progress Report. The Design-Builder shall coordinate any inspections which may be required by any government agencies or the MSA, subject to Owner Changes (Section 18.5).

Section 6.2 Inspections

6.2.1 As used in this Section 6.2 and elsewhere wherever the context calls for it, “inspection” *includes* testing and/or approval of work.

6.2.2 The Design-Builder shall at its expense, maintain an adequate inspection system and perform, or cause to be performed, such inspections as are required by the contract such as an electrical inspection from an independent (nongovernmental) electrical inspection agency approved or licensed as required by law when required under the contract.

6.2.3 The Design-Builder shall schedule and coordinate all inspections provided by the MSA (or on MSA’s behalf by a third-party engaged by MSA) in a manner that ensures such inspection is performed in accordance with the Contract Documents and as required to maintain the Project Schedule.

6.2.4 The Design-Builder shall make application for the inspection, coordinate same, and pay the required inspection fees. The Design-Builder shall maintain complete records of inspections and shall give MSA copies of these records as they are made. All work shall be conducted under the general direction of the MSA and is subject to State inspection at all places and at all reasonable times to ensure strict compliance with the Contract.

6.2.5 If the Contract, or any applicable laws, ordinances, regulations, or order of any public authority or agency having jurisdiction require any work to be specially inspected, tested or approved, the Design-Builder shall give the MSA and any other public authority or agency which must be present or which otherwise should be notified, timely notice (at least 14 calendar days) of readiness for inspection and, if the inspection is by an authority or agency other than the MSA the date of the inspection.

6.2.6 The MSA may charge the Design-Builder any additional cost of inspection when Work is not ready at the time specified by the Design-Builder, or when prior rejection makes re-inspection necessary.

6.2.7 All Work, including fabrication and source of supply, is subject to inspection by the Architect, MSA or the State, or any third party inspector. Other than the MSA, inspectors are not authorized to revoke, alter, or waive any requirements of the Contract. Inspectors are authorized to call the attention of the Design-Builder to any failure of the Work to conform to the Contract, including but not limited to the existence of unsafe conditions, inadequate safeguards and exits, and nuisances. Inspectors are authorized to suspend the Work or any portion of the Work, at no additional charge to the MSA, until resolution of issues concerning compliance with Contract requirements.

6.2.8 Inspections by the MSA or the State are for the sole benefit of the MSA. Inspections by the MSA or the State, or the presence or absence of the MSA or a State inspector at any inspection, or the failure of the MSA or the State inspector to report any deviation by the Design-Builder from Contract requirements shall not: (i) relieve the Design-Builder of responsibility for adequate quality control measures, compliance with Contract requirements, or damage to or loss of material; (ii) constitute or imply acceptance of any Work; or (iii) affect the continuing rights of the MSA to hold Design-Builder responsible for failure to meet Contract requirements.

6.2.9 If the MSA determines that any Work requires special inspection not required by the Contract, it may direct the Design-Builder to obtain such inspection and the Design-Builder shall

do so. If the inspection reveals a failure of the Work to comply with Contract requirements, the Design-Builder shall bear all costs of the inspection, and any other costs incurred by the MSA. In all other cases, the MSA shall bear such costs and an equitable adjustment may be made to the GMP as an Owner Change (*see* Section 18.5).

6.2.10 Required certificates or other documentation of inspection shall be obtained by the Design-Builder and promptly delivered to the MSA, and any other public authority or agency entitled thereto.

Section 6.3 Checklists

6.3.1 Close In Checklists. The Design-Builder shall prepare and observe appropriate checklists for any Project Work that will be buried, encased in concrete or other material, or enclosed in walls to ensure that all such work has been fully and properly performed prior to being buried, encased or enclosed.

6.3.2 Reserved

6.3.3 Checkout, Initial Start-Up & Testing.

MSA acceptance of all operations and maintenance manuals, training materials, etc. is required prior to commencing start-up and commissioning.

6.3.4 The Design-Builder shall perform or observe the Trade Contractors' performance of the final checkout of utilities, operational systems and equipment for readiness.

6.3.5 The Design-Builder shall assist in the initial start-up and testing and make arrangements with the Trade Contractors for appropriate maintenance personnel to be trained in the operations of the equipment.

6.3.6 The Design-Builder shall perform the requirements of this Section with input and participation of the MSA and the Architect and consistent with the provisions of the Contract Documents.

6.3.7 If applicable, the Design-Builder shall coordinate the Work with the MSA's Commissioning Agent.

6.3.8 All operations and maintenance training, start-up and testing must be completed prior to the issuance of a Certificate of Substantial Completion.

Section 6.4 Completion List and Punch List

6.4.1 Throughout the execution of the Work, Design-Builder shall maintain a list of items needed to be completed or corrected to meet the Substantial Completion Date (the "**DB Completion List**"). The Design-Builder shall provide copies of the DB Completion List to the MSA at progress meetings for their review and comment.

6.4.2 If the MSA determines that Substantial Completion has been achieved as defined in Section 1.1, the MSA shall determine the time within which the Design-Builder shall complete any remaining items of work, which will be indicated on a list (the "**Punch List**").

6.4.3 Unless the MSA establishes a different period, the Punch List shall be completed within thirty (30) days after the date of Substantial Completion.

644 If the Design-Builder fails to complete the Punch List in the required time, the MSA shall have the undisputed right to complete the work at the Design-Builder's expense.

645 Failure to complete the Punch List in a timely manner shall constitute grounds for termination of the contract for default.

646 Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Design-Builder to complete the Contract as required by the Contract Documents.

ARTICLE 7 PROGRESS REPORTS; MEETINGS; COSTS

Section 7.1 Progress Reports

7.1.1 Progress Reports. The Design-Builder shall record the progress of the Project and shall submit a monthly report containing the information shown on **Exhibit F** to the MSA.

Section 7.2 Progress Meetings

7.2.1 Progress Meetings. The Design-Builder shall:

(a) Schedule and conduct construction progress meetings (and any other meetings deemed necessary relative to the Project) as either agreed upon by Design-Builder and MSA, or as otherwise required by MSA.

(b) Schedule monthly executive level progress meetings as requested by MSA.

(c) Record and distribute minutes of all construction progress meeting within three (3) business days following the meeting.

Section 7.3 Project Cost; Budget

7.3.1 The Design-Builder shall:

(a) Develop and monitor an effective system of Project cost controls acceptable to MSA. The system should include cash flow projections updated not less than monthly.

(b) Provide monthly reports to MSA showing budgets, committed amounts, Change Orders, contingencies, and the estimated cost to complete variances from budgets; and payments for line items in the account structure.

(c) Advise the MSA promptly whenever any line item of projected cost exceeds either the budget for, or the estimated cost of such item.

ARTICLE 8 RECORDS; DOCUMENTS; AS-BUILT DRAWINGS

Section 8.1 Maintenance of On-Site Documents

8.1.1 The Design-Builder shall keep at the Project site or have available electronically in good order a complete current set of all drawings, specifications, shop drawings, schedules, Change Orders, contracts, addenda, etc.

8.1.2 As-built Drawings: One set of all contract drawings must be maintained as “as-built” drawings.

8.1.3 Design-Builder will not be entitled to receive progress payments unless the on-site as-built drawings are kept up to date as required by the Contract.

8.1.4 The Design-Builder shall make all records available to the MSA.

ARTICLE 9 PERSONNEL

Section 9.1 In General

9.1.1 The Design-Builder shall staff the Project in strict accordance with the project staffing plan (the “**Staffing Plan**”) attached hereto as **Exhibit I**.

9.1.2 If required by applicable State or federal law, any personnel involved in the Project shall be subject to a security and/or criminal background check. Before or after award of the contract, at the sole discretion of the MSA, those persons found to be unfit to work on State contracts may be excluded from the job site at no additional cost to the MSA.

9.1.3 Only personnel thoroughly trained and skilled in the tasks assigned them may be employed on any portion of the Work. Any employee found to be unskilled or untrained in its work shall be removed from the Work.

9.1.4 When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the Work shall be so licensed.

9.1.5 The Design-Builder shall employ on the Project, at all times, sufficient personnel to complete the Work within the time stated in the Contract.

9.1.6 Minor changes in staff not involving Key People (as defined below), are not subject to MSA’s approval, however, the Design-Builder shall provide written notice to the MSA. With respect to substitutions of staff, in addition to notice, the Design-Builder shall provide the MSA with a resume and qualification package for the new staff person.

Section 9.2 Key People

9.2.1 “Key People” are principals and employees of the Design-Builder who the MSA desires assigned to the Project for the duration of the contract.

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

9.2.3 Key People may not be substituted without the prior written consent of the MSA.

9.2.4 Design-Builder's employees shall be supervised by one or more Key People.

9.2.5 If the MSA in its sole discretion determines that any Key Person is not performing satisfactorily, the MSA shall have the right to direct that Design-Builder to replace the individual(s). The Design-Builder shall provide the MSA with resumes of possible replacements within three business days, and the MSA shall have the opportunity, but not the obligation to interview replacement candidates.

ARTICLE 10 CPM SCHEDULE and REPORTS

Section 10.1 Notices to Proceed & Critical Path

10.1.5 CPM Schedule and Reports. The Design-Builder shall prepare and maintain the Project CPM schedule and reports in accordance to the requirements outlined in **Exhibit J.**

10.1.1 The Commencement Date. The Commencement Date shall be the date indicated in the NTP with Construction Design and Preconstruction. The MSA may issue partial NTPs for portions of the Work coordinated with availability of funds or as the Project may require.

10.1.2 If Design-Builder fails to proceed with the Work within ten (10) business days after the issuance of the NTP for the entire Project it shall be an Event of Default under Article 22.

10.1.3 Substantial Completion. The Design-Builder shall achieve Substantial Completion of the entire Work not later than the date identified in the NTP with Construction.

10.1.4 Final Completion. The Design-Builder shall achieve Final Completion not later than the date identified in the NTP with Construction or otherwise required by this Agreement.

ARTICLE 11 SUBSTANTIAL AND FINAL COMPLETION

Section 11.1 Time is of the Essence

11.1.1 Time is of the Essence

The Design-Builder acknowledges that time is of the essence for the Work under this Agreement and that MSA, the State, or the Client may suffer financial loss if either Substantial Completion or Final Completion do not occur by the respective dates set forth in the NTP.

Section 11.2 Substantial Completion

11.2.1 Notwithstanding the required elements of Substantial Completion as defined in Section 1.1, the Design-Builder shall not be held responsible for delays affecting the critical path described in Section 12.2, which are caused or created by contractors hired directly by the MSA.

11.2.2

(a) The Design-Builder shall give reasonable advance notice to the MSA of the anticipated Substantial Completion date.

(b) The Architect will inspect the Project to confirm that it has achieved Substantial Completion and provide the MSA with a certification in a form acceptable to MSA stating Substantial Completion has been achieved.

Section 11.3 Project & Contract Close Out; Warranties

11.3.1 Project Close-Out.

The Design-Builder shall secure and provide to the MSA all items described in and set forth in **Exhibit G** "Final Project Report."

11.3.2 The Design-Builder shall sign off on a Final Completion certificate (*see **Exhibit H*** attached) upon the completion of all Work and the satisfaction of all contractual requirements.

11.3.3 Contract Close-Out. The Design-Builder shall continue to provide services as necessary after Final Completion to close-out Trade Contracts, Subcontracts, Purchase Orders, etc. and to resolve outstanding claims which arose prior to Final Completion.

11.3.4 Warranty.

Except to the extent that the contract documents impose longer warranty obligations on the Design-Builder for all or any part of the work, the Design-Builder warrants for a two year period commencing on the date of substantial completion of the Project as a whole or on such other date agreed between the parties:

(a) That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.

(b) That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use for which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner.

(c) Found not to be as guaranteed by this Section or otherwise not in conformity with the Contract Documents and that the Design-Builder will make good all damages caused to other work or materials in the process of complying with this Section.

(d) That the entire work shall be watertight and leak-proof in every particular.

11.3.5 The Design-Builder is liable for failure to perform the contract in accordance with its terms and is bound to replace work deemed defective or non-conforming. Nothing herein releases or limits the Design-Builder's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

Section 11.4 Final Completion

11.4.1 Upon satisfactory receipt and acceptance by MSA and Architect of all requirements in accordance with this Agreement and the Contract Documents, including full and final completion of all Punch List items, a Certificate of Final Completion in the form attached hereto as **Exhibit**

H will be issued by the MSA and Architect. If the MSA has reasonable cause to believe that the Design-Builder will not achieve Final Completion by the Final Completion Date, the MSA may withhold all or a portion of the Design-Builder Fee remaining to be paid until Final Completion is achieved. (see also Section 20.7 Additional Withholding) Any withheld amounts shall be paid in accordance with Article 21 once Final Completion is achieved.

11.4.2 In addition to the requirements of Section 20.10 final payment shall not be made until Final Completion.

11.4.3 Correction of Work before Final Payment.

The Design-Builder shall promptly remove from the premises all work failing to conform to the Contract, whether or not incorporated in a structure, the Project or property.

11.4.4 Subject to MSA's rights under Section 1.3.4, the Design-Builder, at its own expense, shall promptly replace and re-execute such work in accordance with the contract, and shall bear the expense of making good all work of other contractors (including trade and sub-contractors) destroyed or damaged by such removal or replacement.

11.4.5 If the Design-Builder does not remove such non-conforming work within a reasonable time, the MSA may remove it and may store materials at the expense of the Design-Builder. If the Design-Builder does not pay the expense of such removal or storage within ten days' time thereafter, the MSA may sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses incurred by the MSA.

Section 11.5 Use and Occupancy

11.5.1 The MSA and/or Client may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the State Fire Marshall, or other governmental authority having jurisdiction over the Work. Such partial use or occupancy may commence whether or not the portion is substantially complete, provided the MSA and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance and have agreed in writing concerning the period for completion of correction of the Work and commencement of warranties required by the Design-Build Documents.

11.5.2 Subject to the provisions of Section 11.2 regarding Substantial Completion, partial use or occupancy shall be subject to the consent of the Design-Builder, which consent shall not be unreasonably withheld.

11.5.3 Prior to partial use or occupancy, the MSA, or MSA's designated representative(s) and Design-Builder shall jointly inspect the area to be used or occupied or portion of the Work to be used to determine the condition of the Work. Their findings and observations, and the stage of progress shall be documented in writing executed by the MSA and Design-Builder.

11.5.4 Unless otherwise agreed to in writing, partial use or occupancy of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

Section 11.6 - Warranty Period Inspection

11.6.1 The Design Builder and its lead Architect, structural, and MEP engineers shall conduct a warranty period walk-through of the Project at the six (6); twelve (12); and twenty-three (23) month milestones after Substantial Completion.

11.6.2 The Architect shall compile, review, verify, and document in writing items identified by the MSA, the Design Builder, lead Architect, structural engineer or MEP engineers, conferring with them if necessary. Identify action items and time-frames for completion. Provide follow-up and follow-through as necessary on warranty and operational issues, and other items that are unresolved or that arise during the warranty period.

ARTICLE 12 DELAYS & TIME EXTENSIONS

Section 12.1 Delays Generally

12.1.1 The term “delay” shall mean any act, omission, occurrence, event, or other factor which results in a failure to complete any work within the time planned for it in accordance with the Project Schedule. This Section 12.1 covers every such act, omission, occurrence, event or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, construction suspension, extension or otherwise.

12.1.2 Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted, with a full work force until completion. Design-Builder must take all reasonable action to avoid or to mitigate the effects of delays, recognizing that a delay in any one phase of the Project or in any work sequence or other aspect of the Work does not necessarily result in any delay in, or a delay of equal duration in completion of all the Work. *See also **Exhibit J**.*

Section 12.2 Critical Path Delay – Design-Builder Not At Fault

12.2.1 If Design-Builder is delayed in the critical path shown by the CPM schedule by (i) fault of the MSA, or other contractor or consultant separately hired by the MSA (but only to the extent such fault is not caused by Design-Builder or by its failure to coordinate the Work under the Contract); or (ii) one or more of the following events of force majeure:

- (a) bomb threats;
- (b) embargoes;
- (c) fire;
- (d) unavoidable casualties;
- (e) national emergencies or states of emergency declared by the federal government, the State, or local government – including but not limited to epidemics and pandemics;

- (f) unusually severe weather conditions in accordance with Section 12.5.2; or
- (g) acts of terrorism.

And any aforementioned delay adversely affects the expected date for Substantial Completion, *then* Design-Builder shall endeavor to provide for and implement a *time recovery schedule* to minimize the effects of any such delay without incurring additional costs in excess of the Cost of the Work and which the MSA is not willing to assume.

And any aforementioned delay adversely affects the expected date for Substantial Completion, *then* Design-Builder shall endeavor to provide for and implement a *time recovery schedule* to minimize the effects of any such delay without incurring additional costs in excess of the Cost of the Work and which the MSA is not willing to assume.

1222 If no recovery schedule is reasonably possible, the MSA shall approve an extension to the Project Schedule for a period as may be reasonably necessary (but no longer than the length of the delay), *if* within ten (10) business days after Design-Builder learns, or should have learned of any such delay, it delivers to the MSA in writing:

- (a) a notice of the commencement of the delay;
- (b) its anticipated duration; and
- (c) a claim for a time extension on account thereof (certifying that no time recovery schedule is reasonably possible).

1223 If Design-Builder fails to deliver the written notice and claim as set forth above, then any claim for an extension of time on account of such delay shall be deemed waived by the Design-Builder.

1224 In the case of a continuing cause of delay the Design-Builder shall be required to file only one initial notice with respect thereto, prior to the termination of the condition caused by the delay.

1225 Knowledge on the part of the MSA of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Design-Builder's failure to give the required notice.

1226 It is understood that there are changes in the Work which by their nature do not delay Substantial or Final Completion.

1227 There shall be no extensions of time for Inside GMP Changes (*see* Section 18).

Section 12.3 Critical Path Delay – Design-Builder At Fault

12.3.1 When the Design-Builder or any Architect, consultant, contractor under contract with Design-Builder or a member of Design-Builder Team or its Trade Contractor, Subcontractor or Supplier is responsible for a delay, the MSA may order the Design-Builder to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or do anything else reasonably necessary in order to finish on time, at no additional cost to the MSA or increase of the Cost of the Work. The Design-Builder does not have the unilateral right to complete the Work late.

12.3.2 Unless the MSA expressly agrees *in writing* to (1) an extension of the completion date; (2) a waiver of a default (including default associated with the delay); or (3) to pay for any costs

associated with the delay (including acceleration of construction), no action or inaction by the MSA may be deemed or construed as its consent or approval of an extension, a waiver or agreement to pay costs.

12.3.3 If the Design-Builder, or any Architect, consultant, contractor under contract with Design-Builder or a member of Design-Builder Team or its Trade Contractor is responsible for a delay, the MSA, at its option may recover from the Design-Builder *the* MSA's costs incurred for items set forth in Section 12.4 as a result thereof.

12.3.4 MSA may (in its sole discretion) grant time extensions for the sole purpose of providing the Design-Builder with relief from damages. Any extension granted by MSA is not to be construed as an admission of guilt, liability or responsibility for the delay.

Section 12.4 Compensable Delay Costs

12.4.1 Equitable Adjustments for Delay.

Whenever *MSA* is determined to be responsible for a delay that affects the date of Substantial Completion and the Design-Builder is entitled to an equitable adjustment in connection therewith, the amount of the equitable adjustment shall be determined in accordance with this Section.

12.4.2 Recoverable Costs.

Only the following costs may be recoverable by the Contractor as compensation for delay damages:

(a) Direct costs consisting of:

(i) Actual additional salaried and non-salaried on-site labor expenses;

(ii) Actual additional costs of materials;

(iii) Actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment;

(b) Actual additional costs, proven by clear and convincing evidence, subject to the review and approval of the MSA as to eligibility as a recoverable expense.

(c) Costs are not recoverable for Inside GMP Changes.

12.4.3 Subtraction of Recovered/Recoverable Expenses.

There shall be deducted from the compensation payable to the Design-Builder under this Section any and all costs, expenses, and overhead recovered or recoverable by the Design-Builder under Change Orders issued to it, or otherwise recovered or recoverable by it so that no duplication of payment for the same items, services, materials or otherwise are made.

Section 12.5 Non-Compensable Delay Costs

12.5.1 No other compensation or damages are recoverable by the Design-Builder for compensable delays or extensions of the completion time except as expressly stated in Section 12.4 or as provided in Section 18.5 (Owner Changes). In particular, MSA will not be liable for the following (by way of example and not limitation) whether claimed by the Design-Builder or by a Trade Contractor or supplier at any tier:

- (a) Profit in excess of that provided herein;
- (b) Loss of profit;
- (c) Home office or other overhead in excess of that provided herein;
- (d) Overhead calculated by use of the Eichleay formula or similar formula;
- (e) Consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency;
- (f) Indirect costs or expenses of any nature except those expressly provided for herein; and
- (g) Attorney's fees, costs of claims preparation and presentation and costs of litigation.

12.52 Weather.

(a) The schedule shall include normal weather conditions such as rain, snow, and freezing temperatures. An extension of time will not be allowed for normal inclement weather as recorded by the National Weather Services. *See also **Exhibit J.***

(b) Claims for time extensions due to weather must be supported by climatological data covering the period for the five (5) preceding years. When the weather in question exceeds the intensity or frequency for the worst three (3) year average, the excess experienced shall be considered "unusually severe." Comparison shall be made on a monthly basis.

(c) Determination of whether or not unusually severe weather in fact delays Substantial Completion will depend on the cumulative analysis of the effect of such weather on the Work performed over the entire duration of the Project.

12.53 Design-Builder shall not be entitled to any compensation or delay damages unless it has complied with the notice requirement in Section 12.2.2. Knowledge on the part of the MSA of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Design-Builder's failure to give the MSA the required notice.

12.54 Delays for reasons described in Section 18.2 (Inside GMP Changes) shall be non-compensable even if an extension of time is granted.

12.55 MSA's exercise of its rights to order changes in the Work, regardless of the extent or number of changes; exercise of any of its remedies for suspension of the Work, correction or re-execution of any defective Work; or MSA's exercise or enforcement in good faith of any other rights or remedies under the Contract Documents shall not be construed as either a breach of this Agreement or as willful interference by MSA with Design-Builder's performance of the Work.

12.56 Delays caused by MSA, its agents or consultants, even if Design-Builder asserts such are the result of a material breach of this Agreement or willful interference by MSA, its agents or consultants with performance of the Work - shall not be grounds for an extension of time, claim for damages or an increase in the GMP if and to the extent such delays are concurrent with other causes of delay for which MSA, its agents or consultants are not responsible.

Section 12.6 Liquidated Damages

12.61 In addition to MBE Liquidated Damages set forth in Article 24 Design-Builder may be subject to liquidated damages for each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in this Agreement.

12.62 The Design-Builder shall be liable for liquidated damages in the amount(s) provided for in the RFP, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved changed orders.

12.63 The provisions of this Section 12.6 notwithstanding, if MSA and the Design-Builder negotiated Liquidated Damages as part of the solicitation, the resulting written agreement between MSA and the Design-Builder with respect to Liquidated Damages shall control.

ARTICLE 13 MSA'S RESPONSIBILITIES

13.1.1 The MSA shall provide information regarding its requirements for the Project.

13.1.2 The MSA's Project Manager identified in Section 27.19 shall be fully acquainted with the Project and has authority to make routine project decisions on behalf of MSA and approve Owner Change Orders. Any limitations of the foregoing shall be indicated to the Design-Builder in writing.

13.1.3 The MSA shall review and approve or take other appropriate action upon the Design-Builder's submittals including but limited to design and construction documents required by the Construction Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents.

13.1.4 The MSA shall furnish all reasonably available surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, and known utility locations. The Design-Builder is responsible for providing all necessary surveys not available from the MSA.

13.1.5 The services, information, surveys and reports required by this Article 13 or otherwise, to be furnished by the MSA or other consultants employed by the MSA, shall be furnished with reasonable promptness at the MSA's expense. The Design-Builder shall verify the accuracy and completeness of the aforementioned.

13.1.6 Addressing the presence of hazardous materials as provided in Section 1.5.

13.1.7 If the MSA becomes aware of any fault or defect in the Project or nonconformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Design-Builder.

13.1.8 Public Officials Not Personally Liable. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of the MSA or any employees or representatives of the MSA, either personally or as official of the State, it being understood that in all such matters they act solely as agents and representatives of the MSA.

ARTICLE 14
DESIGN-BUILDER'S COMPENSATION

Section 14.1 Design and Preconstruction Fee

14.1.1 For the performance of the Design and Preconstruction Services set forth herein and for the profit and overhead related to these services, a lump sum fee of \$ shall be paid to the Design-Builder.

14.1.2 The Design-Builder's design personnel to be assigned during the Design and Preconstruction Phase of the Work and their duties and responsibilities, fee schedules and duration of their assignments are shown on Exhibit J - attached hereto. Such personnel shall not be replaced without the prior consent of MSA, which consent shall not be unreasonably withheld.

Section 14.2 Construction GMP

14.2.1 When MSA and the Design-Builder have agreed to the GMP, the terms shall be set forth on an Amendment to this Contract pursuant to Section 3.6.

14.2.2 MSA will agree to pay all sums owing to the Design-Builder pursuant to the GMP subject to the terms and conditions of this Agreement.

14.2.3 General Conditions: A lump sum fee of \$ shall be paid to the Design-Builder.

14.2.4 The GMP includes a breakdown of the costs, or estimated costs (the "**Cost Breakdown**") of the various portions of the Work (i.e. the line item limits for each portion including the Cost of the Work, General Conditions, Design-Builder's Fee, Design-Builder Allowances and Holds (*see Section 18.4*), and Owner's Contingency and Allowances, all of which shall be separately accounted for. The aggregate of these costs is the total sum of the GMP.

14.2.5 Changes or adjustments to increase a line item amount shall be permitted only if the Design-Builder demonstrates to MSA's satisfaction that the increase can be off-set by savings in another line item in equal amount, and that an adequate balance remains to complete the Work. All such changes or adjustments must be approved by the MSA, which approval will not be unreasonably withheld.

14.2.6 The Design-Builder has provided the GMP based upon the 70% Construction Documents. The Design-Builder represents that the GMP adequately covers the reasonably inferable intent of the Contract Documents.

14.2.7 The Design-Builder shall exert its best efforts to promptly identify potential areas and items that may result in Change Orders ("**Anticipated Changes**") and shall assist the MSA in preparing a list of such items so that the Design-Builder and MSA can avoid the risk of increases to the Cost of the Work.

14.2.8 Throughout the Contract Term, the Design-Builder shall promptly notify the MSA of any area or details in Contract Documents which are either vague, incomplete, erroneous or confusing and shall assist in clarifying, resolving and correcting such items so as to maintain the Cost of the Work.

14.3.7 If at any time during the execution of the Work, the probable costs will exceed the Cost of the Work, the MSA shall have the right to direct the Design-Builder to redesign the Project as necessary to maintain the program and meet the Cost of the Work.

14.3.8 The Design-Builder shall not be entitled to make a claim for additional cost or time if the Design-Builder fails to notify the MSA within five (5) business days of any Anticipated Change of which the Design-Builder becomes aware and which would possibly cause an increase in the Cost of the Work.

ARTICLE 15 COST OF THE WORK

Section 15.1 Included in GMP Cost of the Work

15.1.1 The term “**Cost of the Work**” shall mean costs expressly authorized under Article 15 which costs are:

- (a) Necessarily incurred on the Project during the Construction Phase;
- (b) Paid by the Design-Builder, and
- (c) Not included in the General Conditions or the Design-Builder’s Fee.

15.1.2 The following items shall be included in the Cost of the Work:

(a) Wages paid for trade labor in the direct employ of the Design-Builder under applicable collective bargaining agreements, or, under a salary or wage schedule agreed upon by the MSA and Design-Builder and including such welfare or other benefits, if any, as may be payable with respect thereto.

(b) Payments made by the Design-Builder to Trade Contractors, Subcontractors or Suppliers for work performed pursuant to contracts under this Agreement, including the cost of Trade Contractors/Subcontractor’s payment and performance bonds.

(c) Sales, use, gross receipts or similar taxes related to the Work imposed by any governmental authority, and for which the Design-Builder is liable.

(d) Permit fees, (including building permit, permits, licenses, certificates, tests and inspections pursuant to Sections 4.16, 5.5, and Article 6.

(e) *Subject to Section 4.12*, royalties and license fees paid for the use of any materials, equipment processes, design, product, or other items of a particular manufacturer or manufacturers specified by the Contract Documents.

(f) The cost of the builders risk policy and the deductible portion of any loss covered by the Builder’s Risk and Flood insurance policies maintained by the Design-Builder as required by this Agreement, up to a maximum of Five Thousand Dollars (\$5,000) per occurrence on the Builder’s Risk policy and Twenty Five Thousand Dollars (\$25,000) per occurrence on the flood and earthquake insurance policy.

(g) Costs for items of work commonly identified as “General Requirements” including, but not limited to: (1) project documentation and reproduction; (2) consumption for temporary project

utilities; (3) waste management and daily cleaning including dumpsters, street sweeping; (4) weather and other protection including temporary weather and dust protection not in the Trade Contracts/ Subcontracts, snow removal, materials and maintenance of site sediment and erosion control devices not included in Trade Contracts/Subcontracts; (5) miscellaneous materials and small tools; and (6) protection of finished work not in Trade Contracts/Subcontracts.

(h) Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of the Project.

(i) Costs of materials described in the preceding subsection (g) in excess of those actually installed to allow for reasonable waste and spoilage. Unused materials, if any, shall become the MSA's property at the completion of the Work or, at the MSA's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the MSA as a deduction from the Cost of the Work.

(j) Costs including transportation and storage, installations, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. Cost for items previously used by the Design-Builder shall mean fair market value.

(k) Rental charges for power operated equipment required for the Work supplied by Design-Builder or rented from others at rates approved by the MSA. All equipment shall be delivered in good condition and hereafter all charges for operating and maintaining equipment shall be charged at cost. Normal wear and tear, repair costs of a capital nature and depreciation charges on equipment shall not be charged but shall be covered by the rental fee charged. The rental fee charged shall be at the lowest prevailing local rates. A schedule of the rental rates and equipment valuations shall be submitted to the MSA for approval. Rental charges for each item Design-Builder owned equipment or tools furnished by Design-Builder shall be charged to the Cost of the Work until such time as the aggregate of such rentals for any items equals eighty-five percent (85%) of the agreed value of that item, entitled "Equipment Value/Rental Rate Schedule and Equipment Log" (the "**Equipment Log**"): thereafter, only routine repair and maintenance costs for servicing such items shall be charged to the Cost of the Work or the balance of the period that the equipment and tools are used in performance of the Work. The Design-Builder shall maintain and furnish to the MSA an Equipment Log to track all equipment valued in excess of Five Hundred Dollars (\$500.00) for which rental is charged to the Project. The Equipment Log shall be submitted each month with Design-Builder's progress pay application as part of the documentation for the equipment charges. All power tools, equipment, or other devices, for which rent is charged to the Project, shall be removed from the site in order to terminate the rental charges as soon as possible.

(l) Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the MSA. The Trade Contractors and the Design-Builder shall not bill for or be paid for materials and equipment that are "in stock" and not segregated for and to be promptly incorporated into the Work. Materials and equipment that are needed for the Work shall be stored on site and the Design-Builder will provide security for same. The Design-Builder shall cause insurance coverage to be provided for stored materials and equipment consistent with the requirements of the MSA and the Contract Documents.

(m) Cost of Performance and Payment Bonds and/or sub-contractor default insurance. This shall be submitted in the forms attached hereto as **Exhibit N** and **Exhibit O**.

(n) Cost of the premiums for all insurance which the Design-Builder is required by this Agreement to procure. Any additional or separate insurance which the Design-Builder deems necessary for the prosecution of the Work shall require the prior written consent of the MSA to be included with General Condition's expenditures.

(o) Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the MSA as set forth in the Contract Documents.

(p) Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Trade Contractor or their subcontractors and suppliers, provided that such damaged or nonconforming Work was not cause by negligence or material failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Trade Contractors, or their subcontractors or suppliers.

(q) Cost incurred due to an emergency affecting the safety of persons and property, unless such emergency is caused by the Design-Builder's gross negligence, fault, or breach of contract.

(r) The cost of corrective or warranty work provided such work results from causes other than the Design-Builder's negligence or breach of contract. The cost of corrective or warranty work made necessary due to Trade Contractor shall be reimbursable only after Design-Builder has exhausted all good faith efforts to secure replacement of the defective work or compensation from such Trade Contractor.

(s) Cost of overtime work required in the reasonable judgment of the Design-Builder to maintain the Project Schedule provided that:

(i) the cost of such overtime work results from causes *other than* the Design-Builder's negligence, breach of contract or delay for which it was responsible regardless of negligence, and;

(ii) the Design-Builder has given prior written notice to the MSA of the overtime or extension of schedule.

(t) GMP Contingency as defined in Section 18.3.

ARTICLE 16 GENERAL CONDITIONS

Section 16.1 Included in General Conditions

16.1.1 The "**General Conditions**" include all expenditures required to be made by the Design-Builder to fulfill its obligations under this Agreement and that are not included in the Design-Builder's Fee or the Cost of the Work. The General Conditions are fixed. The Design-Builder may not use GMP Contingency (defined in Section 18.3) without MSA approval, for overages in the General Conditions. General Conditions include, but are not limited to the following:

(a) Direct Personnel Expense of Design-Builder's Key People and other staff working on the Project in accordance with the Staffing Plan (including Design-Builder Team) as provided in

Article 8 and attached as **Exhibit I**, “Direct Personnel Expense” is defined as the direct salaries allocated on an hours worked basis of Design-Builder’s employees engaged in performing the services under this Agreement and the cost of all employee benefits, including, without limitation, (i) medical and worker’s compensation insurance, allowed absences, vacations, pension, and/or profit sharing, all in accordance with Design-Builder’s standard personnel policy, and (ii) taxes for such items as unemployment compensation and social security.

(b) Cost of job site computer, hardware, software, supplies, and communications.

(c) Costs, including setup and maintenance of temporary facilities.

(d) The actual costs of necessary and reasonable document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, and telephone service at the site; and reasonable petty cash expenses of the site office. (e) Subject to the approval of the MSA, and the rates set forth in the State’s standard travel regulations, as amended from time to time, the costs of travel expenses including transportation, meals and lodging. *Excluding* telephone calls, facsimile costs and travel between the offices of MSA, the Project site, and the Contractor.

Except as provided in this Section Direct Personnel Expense of those employed directly in the construction of the project shall be included with the Cost of the Work.

ARTICLE 17 DESIGN-BUILDER FEE

Section 17.1 Included in Design-Builder Fee

17.1.1 The “**Design-Builder Fee**” is a lump sum fee of \$ to be paid to the Design-Builder, includes the Design-Builder’s profit and all expenditures required to be made by the Design- Builder to fulfill its obligations under this Agreement and that are not included in the Cost of the Work or the General Conditions including, but not limited to the following:

(a) Salaries, expenses, and/or other compensation of the Design-Builder’s personnel stationed at the Design-Builder’s principal office or offices other than the site office,- except as expressly provided in Sections 24.1 and 25.1; as specifically provided in the Contract Documents or as approved by the MSA.

(b) Expenses of the Design-Builder’s principal office and offices other than the Project Site office.

(c) Overhead and general expenses.

(d) The Design-Builder’s capital expenses, including interest on the Design-Builder’s capital used to perform the Work and the Design-Builder’s obligations under the Contract Documents.

(e) Rental costs of machinery and equipment, except as specifically provided in Section 24.1(j).

(f) Except as provided in Sections 15.1.2 (p) and (r), costs due to the negligence or failure to fulfill a specific responsibility of the Design-Builder, Trade Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

(g) Any cost not specifically and expressly described in Sections 24.1 and 25.1 above.

(h) Costs, expenses and legal fees due to the negligence of, wrongdoing of, or violation of this Agreement or other contractual or legal obligation by the Design-Builder or anyone directly employed by him, including, but not limited to, the correction of defective or non-conforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property or performing any warranty work.

(i) Automobile repairs for Design-Builder's vehicles.

(j) Costs of any education or training of Design-Builder's employees.

(k) Any Gross Receipts taxes resultant from the Design-Builder's performance of the Work.

ARTICLE 18 CHANGES IN THE PROJECT

Section 18.1 Generally

18.1.1 The Design-Builder acknowledges that the GMP and Substantial Completion Date are based upon the GMP Amendment executed between the Design-Builder and MSA.

Subject to Article 14, the GMP includes the cost to perform all Work necessary to provide a complete and usable facility in accordance with the scope, intent, and the reasonably referable intent of the Contract Documents. The Design-Builder will administer changes in the Trade Contracts, Subcontracts and other agreements in accordance with this Agreement.

18.1.2 There shall be two types of changes recognized by this Agreement: "Inside GMP Changes" and "Owner Changes." Except as specifically set forth herein, Inside GMP Changes and Owner Changes shall both be governed by the provisions in this Agreement. Any disagreement over whether a change is an Owner Change or an Inside GMP Change shall be determined in accordance with the Disputes provisions of Article 26.

Section 18.2 "Inside" GMP Changes

18.2.1 "Inside" GMP Changes.

(a) Inside GMP Changes are any changes to the Cost of the Work in connection with or related to matters that are reasonably inferable from the Contract Documents including details which should have been anticipated by the Design-Builder at the time of the MSA's approval of the GMP; or changes that are needed for a complete working system.

(b) Inside GMP Changes include but are not limited to:

(i) refinement of details of design within the scope of standards;

(ii) quality and quantities which may reasonably be inferred from the GMP documents;

(iii) terms omitted during buy-out;

(iv) correction of defects of labor or materials;

- (v) corrections in the Work provided the Design-Builder has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor;
 - (vi) labor and material overruns, and additional costs relating to Trade Contractor defaults - provided any such default is not due to the MSA's actions or failure to act.
 - (vii) scope gaps between Trade Contractors;
 - (viii) contract default by Trade Contractors;
 - (ix) costs of corrective work not provided for elsewhere;
 - (x) expediting/accelerating of the Work to meet scheduled completion dates (if required),
 - (xi) design omissions, consistent with the intent of the contract, needed for a complete working system.
- (c) Inside GMP Changes shall be paid with DB Contingency defined in Section 18.3 below.
- (d) The GMP has been calculated to account for mark-ups for insurance, bonds and CM Fee on the entire amount of the DB Contingency. As such, Inside GMP Changes are not to include costs associated with these items.

Section 18.3 GMP Contingency

18.3.1 GMP Contingency.

(a) The GMP includes a Design-Builder controlled contingency (the “**GMP Contingency**”) for Inside GMP Changes. (b) The GMP Contingency is *not* allocated to any particular item and is established for the Design-Builder's use as may be required for increases in costs incurred in the Cost of the Work either from causes or details not reasonably anticipated at the time the MSA approved the GMP.

18.3.2 It is understood that the amount of the GMP Contingency is the maximum sum available to the Design-Builder to cover costs incurred as a result of Inside GMP Changes, and that Inside GMP Changes in excess of the GMP Contingency will be borne by the Design-Builder.

18.3.3 The Design-Builder may not use the GMP Contingency without prior written notice to the MSA for amounts in excess of Ten Thousand Dollars (\$10,000).

(a) The MSA shall have five (5) business days from receipt of said notice (the “**Notice Period**”) to, in writing, object to the proposed use of GMP Contingency and/or request additional information. The Design-Builder shall not use the GMP Contingency over an MSA objection and shall provide the MSA with all requested information.

(b) At the expiration of the Notice Period, if the MSA has not objected to the proposed use of the GMP Contingency nor requested additional information, the Design-Builder may proceed and no further notice to or from the MSA is required.

Section 18.4. Design-Builder Allowances and Holds

18.4.1 The GMP may include a Design-Builder Allowance or Hold amount for an item of work the precise cost or value of which was not known at the time of GMP acceptance by MSA.

18.4.2 Design-Builder Allowances and Holds shall be used strictly for the purposes for which they are established.

18.4.3 Overruns to Design-Builder Allowances and Holds shall be covered by the GMP Contingency.

18.4.4 The Design-Builder may not self-perform work on Design-Builder Allowance and Hold items without obtaining advanced approval from MSA.

Section 18.5. Owner Changes

18.5.1 Owner Changes are limited to changes that are made necessary as a result of an action or the inaction of the MSA. The Design-Builder's entitlement to an extension of the Contract Time or an adjustment in the GMP in accordance with Sections 12.2 and 12.4 shall also be considered an Owner Change. (*See* also Section 18.6 Owner Change Orders). For purposes of this Section, "inaction" shall be limited to the failure of the MSA to either grant or deny a requested approval within 20 days after the Design-Builder's written request therefore.

18.5.2 Notwithstanding the 20 day time period above, in an emergency, the MSA shall make the necessary decision as quickly as the circumstances require, which decision may or may not be given in writing.

18.5.3 If MSA action or inaction increases the cost of performing the Work after MSA's acceptance of the GMP, the Design-Builder may be entitled to an equitable adjustment or amendment to the Substantial Completion Date.

18.5.4 The Design-Builder may be entitled to an equitable adjustment for "Differing Site Conditions" subject to the provisions of Section 1.4.6, in which case it will be treated as an Owner Change for the purpose of this Section.

18.5.5 An extension of the Contract Term shall be subject to Article 12.

Section 18.6 Owner Change Orders

18.6.1 This Section applies to Owner changes which may affect the amount of, or time for performance under the GMP.

18.6.2 In accordance with SFP § 15-112:

If MSA determines that a change in Work is required:

(a) MSA shall issue a written Change Order for work under the Contract that specifies whether the Work is to proceed in compliance with the terms of the Contract on:

- (i) an agreed-to price or agreed upon source of pricing;
- (ii) a force account;
- (iii) a construction change directive; or
- (iv) a time and materials basis.

(b) Until a Change Order is issued as described in (a) above, the Design-Builder is not required to begin change order work, and the Design-Builder may not require any Trade Contractor or Subcontractor to begin work.

(c) If the MSA and the Design-Builder do not agree that work is included within the original scope and terms of the Contract, nothing in this Section:

(i) Prohibits the MSA from issuing an order to the Design-Builder to perform work or furnish labor or materials determined by the MSA to be required by the Contract;

(ii) Authorizes a refusal to perform Work or to furnish labor or materials that the Project Manager has ordered Design-Builder to perform or to furnish which the Project Manager has determined are required by the Contract;

(iii) Prejudices or impairs the right of the Design-Builder to submit a claim or dispute to the MSA, in accordance with applicable law and the Contract, seeking additional compensation for complying with the Change Order.

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

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

(f) Design-Builder shall provide effected Trade Contractors and Subcontractors with copies of the Change Order, the amount to be paid to Trade Contractor(s) or Subcontractor(s) based on the change order within five days after Design-Builder's receipt of the written Change Order from MSA.

Section 18.7 Owner Contingency

18.7.1 The GMP may include a separate Owner's Contingency (the "**Owner's Contingency**"). The Owner, in its sole discretion may use the Owner's Contingency for any Project purpose.

Section 18.8 Owner Allowance

18.8.1 The GMP may include one or more Owner's Allowance items (an "**Owner's Allowance**"). The Owner, in its sole discretion may use an Owner's Allowance for any Project purpose.

Section 18.9 Change Cost Dispute

18.9.1 In the event the MSA and the Design-Builder are unable to reach agreement on the Cost of an Owner Change Order, the Design-Builder shall promptly proceed with the subject work, upon receipt of written direction from MSA.

18.9.2 The cost of such work shall be determined in accordance with the "Disputes" provisions of this Agreement.

18.9.3 Pending final determination of the total cost of an Owner Change, amounts not in dispute may, with a Change Order and the prior approval of the MSA (which shall not be unreasonably withheld), be included in the Design-Builder Invoice (as defined in Section 20.1). In all instances, Change Orders must be complete, inclusive of all impacts to the Design-Builder and the Trade Contractors, prior to their submission to the MSA for approval.

18.9.4 In addition to the requirements in this Section 18.9, applicable Change Orders are subject to and shall comply with the provisions set forth in Section 14.3.3 and Exhibit J.

Section 18.11 Value Engineering (During Construction)

18.11.1 Value engineering ideas provided by the MSA or the Design Team will be implemented as a change to the Cost of the Work with 100% of the savings going to and benefitting the MSA as determined by the MSA. Any value engineering proposed by the Design-Builder and accepted by the MSA will serve to increase the GMP Contingency subject to the provisions of Section 18.3.

**ARTICLE 19
STATE PROPERTY NOT SUBJECT TO LIEN.**

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

**ARTICLE 20
PROGRESS PAYMENTS**

Section 20.1 Invoices

20.1.1 The Design-Builder shall require all Trade Contractors, Subcontractors and Suppliers to comply with the payment requirements set forth in this Agreement including the Prompt Payment provisions in Section 4.5 and, if applicable, the Prevailing Wage provisions in Section 4.8.

20.1.2 The Design-Builder shall submit its application for progress payments (the “**DB Invoice**”) to the Project Manager in substantially the form attached hereto as **Exhibit L**, who shall review the DB Invoice, and upon approval, submit the DB Invoice for payment.

20.1.3 The Owner may at any time take such action as it deems appropriate to verify that the conditions precedent to each disbursement have been satisfied, including but not limited to verification of the amounts payable, under this Agreement and each Subcontract. The Design-Builder agrees to cooperate with the MSA in any such action. If in the course of any such verification any amount shown payable under this Agreement or any Trade Contract, Application for Payment, Sworn Statement or Release of Lien and Waiver of Claim, is subject to a discrepancy, such discrepancy shall be promptly remedied by the Design-Builder.

Section 20.2 Discounts, Rebates, and Refunds

20.2.1 If there are cash discounts, rebates or other financial incentives offered to Design-Builder, the MSA shall have the right to accept or reject those financial incentives or benefits.

20.2.2 Any additional funds made available as a result of 20.2.1 shall accrue to GMP Contingency.

Section 20.3 Submissions – Documents, Certifications

20.3.1 The Design-Builder shall

(a) Provide MSA with a copy of the DB Invoice.

(b) Comply with such requirements with respect to any work self-performed by the Design-Builder (see **Exhibit F**).

(c) Lien Waivers.

Before the Design-Builder receives a progress payment or a final payment which includes payments due a Trade Contractor, Subcontractor or Supplier it shall provide the MSA with lien waivers from all Trade Contractors, Subcontractors and Suppliers on a continuous basis.

(i) Lien waivers must be submitted in substantially the same form attached hereto as **Exhibit K**.

(ii) Trade Contractors, Subcontractors and Suppliers are not expected to execute lien waivers for work for which they have not been paid. *However*, the Design-Builder shall certify in writing that, in accordance with contractual arrangements or agreements Trade Contractors, Subcontractors and Suppliers have been paid from the proceeds of previous progress payments; and will be paid in a timely manner from the proceeds of the progress or payment currently due.

(iii) The MSA reserves the right to withhold from any progress payment those amounts payable to a Trade Contractor, Subcontractor or a Supplier whose payments have not been certified in accordance with (c)(ii) above. In all circumstances, lien releases are required for Final Payment.

(d) Certify that all payments received from the MSA in the prior month have been disbursed in accordance with the applicable invoices.

(e) Include with the DB Invoices submitted to the MSA evidence satisfactory to the MSA that disbursements required by (d) above have occurred.

20.3.2 The Design-Builder shall submit to the MSA a monthly statement as described on the attached **Exhibit F** (certified as to its accuracy), showing all moneys paid out, costs accumulated, or costs incurred on account of the Cost of the Work and General Conditions during the previous month.

20.3.3 The MSA and the Design-Builder intend that at all times the estimated cost of performing the uncompleted and unpaid portion of the Work, including the Design-Builder's Fee and General Conditions shall not exceed the unpaid balance of the Design-Builder's Compensation (less retainage on Work previously completed). Therefore, if at any time the MSA determines in its sole discretion that the aggregate amount shown on the Cost Breakdown (as defined in Section 14.3.2), exceeds or may exceed the Cost of the Work, the amount payable by the MSA with respect to the subject DB Invoice shall be reduced by the amount of estimated excess.

20.3.4 The Design-Build Team, or any member thereof shall have access to the Project and the records, documents, or other materials associated with the Project, as they deem necessary to verify the Work performed and the amount requested in any DB Invoice. If the MSA is unable to verify any portion of the Work performed or payment amount(s) requested, the MSA shall be entitled to

withhold payment for that portion of unverified or unconfirmed Work until such time as verification is obtained. MSA shall work with the Design-Builder to resolve any such issues as quickly as possible.

20.3.5 The Design-Builder shall maintain detailed statements, including without limitation, payroll records, receipted invoices, check vouchers, and any other evidence demonstrating costs incurred by the Design-Builder on account of the Cost of the Work, which records shall be available for the MSA's examination during regular business hours.

Section 20.4 Progress Payment Calculation

20.4.1 Subject to the provisions of the Contract Documents, the amount of each Progress payment shall be calculated using the Application for Certification of Payment attached hereto as **Exhibit L**. The values, amounts, claims and actual progress of work remains subject to review of the Architect and the MSA.

20.4.2 General Conditions and Design-Builder Fee shall be billed at the same ratio that corresponds to the percentage complete of the Cost of Work.

20.4.3 Nothing contained in this Article 20 shall require the MSA to pay the Design-Builder an aggregate amount exceeding the amount owing to the Design-Builder pursuant to Article 14 or to make a payment if the MSA reasonably believes that the cost to complete the Work (plus the balance of General Conditions and Design-Builder's Fee) would exceed the balance of the funds available for the same.

Section 20.5 Payment and Interest

20.5.1 Subject to Section 27.4, progress payments to the Design-Builder shall be made no later than 30 days after MSA's receipt of Certification of Payment from the Architect.

20.5.2 Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated utilities as applicable, are prohibited.

20.5.3 An invoice is *not* deemed "due and payable" under this Section except upon receipt of the Certification for Payment from the Architect, and subject to MSA's determination of the amounts it will agree to pay.

Section 20.6 Retainage

20.6.1 Design and Pre-Construction services are not subject to retainage.

20.6.2 A five percent (5%) retainage ("**retainage**") will be retained on the gross billings (Line Item #4 on AIA G702) under the Construction GMP portion of this Agreement certified by the Architect and due to the Design-Builder. (See Sections 4.5 and 4.6 for retainage and prompt payment and subcontractors).

20.6.3 In MSA's sole discretion, retainage may be reduced to an amount less than five percent (5%) after certification of Substantial Completion.

20.6.4 In MSA's sole discretion, retainage may be released to a Trade Contractor, Subcontractor or Supplier whose role in the Project has been completed.

20.6.5 Final retainage shall be released to the Design-Builder at the time of Final Payment.

Section 20.7 Additional Withholding

20.7.1 In addition to retainage the MSA may withhold from payments otherwise due the Design-Builder any amount that the MSA reasonably believes necessary to protect the MSA's or the State's interest, including but not limited to:

(a) Claims filed or reasonable evidence indicating probable filing of claims related to or in connection with the Project.

(b) Failure of the Design-Builder to perform any material contract requirement including failure to make payments as required by this Agreement to Trade Contractors for material or labor.

(c) Reasonable doubt that the Work can be completed for the balance of the funds then unpaid.

(d) Reasonable doubt that the Work can be completed within the balance of the Contract Time then remaining.

(e) Damage to another contractor.

(f) The cost of completing unfinished or defective work.

20.7.2 MSA may withhold estimated actual damages it reasonably believes is necessary to protect the MSA's interest pursuant to this Section 20.7.

Section 20.8 MBE Liquidated Damages Withholding

20.8.1 If the MSA has determined that the Design-Builder will not fulfill its MBE requirements as identified in the Contract Documents, the MSA may withhold an amount equal to the liquidated damages set forth in Article 24 until the Design-Builder 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. See Article 24 for MBE violation liquidated damages provisions.

Section 20.9 Non-Conforming Work Remedied

20.9.1 The MSA may determine that any work which does not satisfy the requirements of the Contract Documents shall not be corrected by the Design-Builder, and in lieu thereof, make an equitable deduction from the Design-Builder's Compensation. Non-conforming work includes work damaged or injured after installation.

20.9.2 The MSA's determination shall be final subject only to appeal as provide in the Disputes clause in Article 26.

20.9.3 Except as provided in this Section 20.9 when the condition(s) in Sections 20.7 and 21.7 are remedied, the amounts withheld shall be disbursed.

Section 20.10 Final Payment

20.10.1 Conditions for Final Payment.

Final Payment is conditioned upon and shall not be due or owing until:

20.10.2 The MSA has approved and accepted the Final Project Report (*see **Exhibit G***) with all required submissions.

20.10.3 The MSA shall have received from the Design-Builder all documents (which are Design-Builder's responsibility) for the use of the Project, including those which by their nature cannot be obtained prior to completion of the project. Upon completion of the Work and as a condition of receiving payment of retainage, the Design-Builder shall submit at final completion "As-Built" Drawings and Specifications showing all of the Work including all changes, locations and installations for the MSA's approval and acceptance.

20.10.4 The Design-Builder shall have met all of its insurance, indemnification and all of its other obligations under the Contract Documents.

20.10.5 The Design-Builder has provided all required MBE documentation in accordance with the Agreement.

20.10.6 Except as provided in Section 20.10.7 below, final payment constituting the unpaid balance of the Cost of the Work and the Design-Builder's Fee shall be due and payable when Final Completion has been achieved in accordance with Article 11.

20.10.7 The MSA may, in MSA's sole discretion, elect to pay the Design-Builder amounts retained for individual items as each item is completed to the satisfaction of the MSA. Notwithstanding the foregoing, in the event of unsettled claims, the MSA may withhold all amounts in dispute until such claims are settled.

Section 20.11 Cost Savings

20.11.1 Cost Savings is the amount of GMP Contingency remaining at the time of Final Completion of the Project.

The Design-Builder may submit a request to share the Cost Savings in an amount not to exceed twenty-five percent (25%) for review and approval by the MSA. At a minimum, the request shall outline the Design-Builder's efforts during the execution of the Project that realized Cost Savings.

20.11.2 The MSA has the sole discretion to:

- (1) approve the request in full.
- (2) approve a portion of the request; or
- (3) deny the request.

ARTICLE 21 DESIGN-BUILDER'S INSURANCE

21.1.1 The Design-Builder shall maintain in full force and effect liability insurance necessary to cover claims arising from the Design-Builder's operations under this Contract. The following types of insurance coverage shall be provided in the amounts indicated as follows:

Coverage limits shall be as follows:

Architect's Professional Liability Insurance in the amount of \$1 million per \$10 million of the Cost of Work (including contractual liability coverage, if available, with all coverage retroactive to the earlier of the date of this

WAYNE K. CURRY CIVIC PLAZA DESIGN-BUILD AGREEMENT

Agreement or the commencement of Architect's services in relation to the Project), said coverage to be maintained for a period of five (5) years after the date of final payment or the date of final completion of the Project, whichever is later.

Builders Risk	All Risk Policy
Worker's Compensation	Statutory
Employer Liability	
Bodily injury (per accident/employee)	\$ 1,000,000
Bodily injury (per disease/employee)	\$ 1,000,000
Policy limit by disease	\$ 1,000,000
<i>Auto Liability</i> (Combined single limit)	\$ 2,000,000
General Liability	
Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
Products-completed Operations	\$ 4,000,000
Excess Liability	
Occurrence and Aggregate	\$ 10,000,000

21.1.2 The insurance shall be kept in full force and effect for two (2) years following substantial completion. Evidence of insurance shall be provided to MSA prior to the execution of the Contract by means of a Certificate of Insurance with copies of all endorsements attached or by certified copy of the complete policy with all endorsements. The Contractor shall deliver to MSA certificates evidencing all required insurance at least once each year (as evidence of continued coverage in the amounts and on the terms required) for the duration of the contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the contract for default. Exclusion endorsement copies shall be attached to the Certificate of Insurance. The Certificate of Insurance shall be accompanied by a

document (a copy of State License or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.

21.1.3 The Contractor shall not commence work under this Contract until all the insurance required under COMAR Section 21.07.02.10 and this Subsection has been obtained and approved by MSA, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been obtained by the subcontractor and approved by the Contractor. All Subcontractors shall be required in the subcontract documents to carry insurance for the line items described in the subcontract. The Contractor shall be responsible for determining appropriate limits for subcontractors, and for enforcing insurance coverage requirements for its subcontractors.

21.1.4 All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be written on forms (including the actual wording of the policies and all endorsements) acceptable to MSA and with insurance companies that hold a current A.M. Best rating of A and that are duly registered or licensed to transact the prescribed coverages in the State.

21.1.5 All insurance policies required by this Section or elsewhere in the Contract Documents shall be endorsed to MSA and the State that the insurance carrier shall provide at least forty five (45) days notice to MSA in the event of cancellation, nonrenewal, or material change in the coverage, either by the insurance company or the Contractor.

21.1.6 The General Liability and Umbrella Liability/Excess Liability insurance policies required by this Subsection or elsewhere in the contract Documents shall include endorsements stating that the State and MSA and any other entities designated by MSA are additional insureds with respect to liability arising out of or resulting from the operations and completed operations of the named insured under the Contract.

21.1.7 All insurance policies required by this Section or elsewhere in the Contract Documents shall contain endorsements stating that such coverage as is provided by the policies for the benefit of the additional insured is primary and other coverage maintained by additional insured (if any) shall be non-contributing with the coverage provided under the policies.

21.1.8 All insurance policies required by this Section or elsewhere in the Contract Documents shall contain waivers of subrogation in favor of the State and MSA and any other entity designated by MSA and shall provide that the bankruptcy or insolvency of the insured does not relieve the insurance company of its obligations under the policies.

21.1.9 In the event any party maintains insurance with limits exceeding the limits required hereunder, the Certificates of Insurance provided to MSA shall state the full extent of the coverage available to the parties. Such excess liability coverage will inure to the benefit of the parties in the event of loss in excess of the minimum insurance required herein.

21.1.10 If, during the term of the Contract, the Contractor fails to secure and maintain the required insurance, MSA shall have the right (without the obligation to do so) to secure the insurance in the amounts specified in the name of the Contractor, in which case, the Contractor shall pay all premiums, deductibles, self-insured retentions or other amounts associated with the insurance and shall furnish all information that may be required in connection with MSA purchasing such insurance.

21.1.11 It is understood and agreed that the coverages and limits contained herein are the minimum requirements only. Contractor is responsible for providing insurance coverage that meets the needs of the Contractor itself, its subcontractors, sub-consultants, employees, and others as obligated in the Contract Documents. All insurance policies shall contain at a minimum the following provisions:

1. Primary General Liability Insurance

A. Coverage – The policy shall include provisions that offer protection against all risks and exposures, including without limitation:

1. Premises and Operations Coverage
2. Products and Completed Operations Coverage
3. Blanket Contractual Liability Coverage, including any indemnity provisions
4. Broad Named Insured Endorsement
5. Notice, Knowledge, and Unintentional Errors and Omissions Coverage
6. Incidental Malpractice Coverage
7. Independent Contractors Coverage
8. Personal Injury Coverage
9. Broad Form Coverage for damage to property of the State, as well as other third parties resulting from the Contractor’s Work
10. Any aggregate limits apply on a “per project” basis

(i) Limits of Liability – See Section 22.1.1.

(iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

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

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

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

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

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

D. All policies must provide that the insurance company have the duty to adjust a claim and provide a defense.

2. Umbrella Liability Insurance

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

(ii) Limits of Liability – See Section 22.1.1.

(iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

(iv) Status of the State as Additional Insured – The Policy shall name the State and MSA and

any other entities required by MSA as additional insured.

3. Automobile Liability Insurance

- (i) Coverage – All vehicles used in conjunction with the Contract shall be insured.
- (ii) Limits of Liability – See Section 22.1.1.
- (iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

4. Workers' Compensation

- (i) Coverage – Statutory Workers' Compensation as required by the State of Maryland.
- (ii) Limits of Liability – Statutory.

5. Builder's Risk Insurance (and Installation Floater, if not included in Builder's Risk Coverage)

- (i) Named Insured – At a minimum the policy shall insure the Contractor, the State, MSA, and any other party with an insurable interest in the Project.
- (ii) Coverage – All risks of direct physical loss of or damage to the property (including without limitation perils of flood). Coverage shall be as broad as possible with respect to both covered property interests and covered locations. All covered locations shall be named, and shall include the contract number and project description. Coverage applies to all materials, supplies, and equipment that are consumed on or intended for State of Maryland specific installation in the Project while such materials, supplies and equipment are located at the Project site. If the Builder's Risk Policy does not cover materials onsite that have not yet been installed, Contractor shall also provide an Installation Floater. Contractor shall comply with any requirements in the Policy for project reports by the Contractor to the insurance company. The Builder's Risk Policy shall be endorsed:
 - (a) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy;
 - (b) to make MSA a Loss Payee for all claims; and
 - (c) to delete any provisions that void coverage with respect to MSA for acts or omissions of the Contractor or any other party.
- (iii) Limits of Liability – Full replacement cost of the structure under construction, plus debris removal coverage and ordinance coverage for all risk perils, and cost of materials onsite that have not yet been installed. Any sub-limits must be clearly identified, and are subject to prior approval by MSA.
- (iv) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

ARTICLE 22
TERMINATION & EVENTS OF DEFAULT

Section 22.1 Termination for Convenience

22.1.1 The performance of work under this contract may be terminated by MSA in accordance with this clause in whole, or from time to time in part, whenever MSA shall determine that such termination is in the best interest of MSA or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

22.1.2 After receipt of a Notice of Termination, and except as otherwise directed by the Project Manager, the Contractor shall:

- (a) Stop work as specified in the Notice of Termination;
- (b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) Assign to MSA, in the manner, at times, and to the extent directed by the Project Manager, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case MSA or the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Project Manager, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) Transfer title and deliver to MSA or the State, in the manner, at the times, and to the extent, if any, directed by the Project Manager, (i) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to MSA;
- (g) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Project Manager, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Project Manager; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by MSA or the State to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Project Manager may direct;
- (h) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(i) Take any action that may be necessary, or as the Project Manager may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which MSA or the State has or may acquire an interest.

22.1.3 The Contractor shall submit to the Project Manager a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Project Manager, and may request MSA to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, MSA shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Project Manager upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

22.1.4 After receipt of a Notice of Termination, the Contractor shall submit to the Project Manager his termination claim, in the form and with certification prescribed by the Project Manager. This claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Project Manager, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the Project Manager determines that the facts justify such action, it may receive and act upon any such termination claim at any time after the three-month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Project Manager may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Project Manager may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

22.1.5 Subject to the provisions of Section 23.1.4 the Contractor and the Project Manager may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Cost of the Work as reduced by the amount of payments otherwise made and as further reduced by the amount of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Section 23.1.6, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Project Manager to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

22.1.6 In the event of the failure of the Contractor and the Project Manager to agree as provided in Section 23.1.5 above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Project Manager shall pay to the Contractor the amounts determined by the Project Manager as follows, but without duplication of any amounts agreed upon in accordance with Section 23.1.5:

(a) for Work performed prior to the effective date of the Notice of Termination:

(i) the cost of such Work;

(ii) the supplies and materials accepted by MSA (or sold or acquired as provided in Section 22.1.2(g) above) and for which payment has not theretofore been made;

(iii) a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the GMP, appropriately adjusted for any saving of freight or other charges;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto to the extent they are separate or additional costs to which the Contractor would be entitled under the contract if not terminated in whole or in part pursuant to the Section, but exclusive of any costs attributable to supplies or services paid or to be paid for under Section 23.1.6(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph 23.1.2(e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and

(iii) a sum, as profit on (i) above, determined by the Project Manager to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total Design-Builder's Compensation as reduced by the amount of payments otherwise made and as further reduced by the amount of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in Section 23.1.6(a) and (b)(i) above, the fair value, as determined by the Project Manager, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to Section 23.1.2(g).

(d) Costs claimed, agreed to, or determined pursuant to Sections 22.1.4, 22.1.5, and 22.1.6 (a), (b) and (i) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this contract.

(e) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Project Manager under Sections 22.1.4, 22.1.6 (a), (b) or 22.1.6(g) hereof, except that if the Contractor has failed to submit his claim within the time provided in Sections 22.1.4 or 22.1.6(g) (hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the Project Manager has made a

determination of the amount due under Sections 22.1.4, 22.1.6 (a), (b) or (g) hereof, MSA or the State shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Project Manager, or (b) if an appeal has been taken, the amount finally determined on such appeal.

(f) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which MSA or the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to MSA or the State.

(g) If the termination hereunder be partial, the Contractor may file with the Project Manager a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Project Manager.

(h) MSA or the State may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Project Manager the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to MSA or the State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the Project Manager by reason of the circumstances.

(i) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to MSA and the State at all reasonable times at the office of the Contractor but without direct charge to MSA or the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Project Manager, reproductions thereof.

Section 22.2 Events of Default

22.2.1 If the Design-Builder:

(a) Fails to proceed with the Work within ten (10) business days after the issuance of the NTP to Proceed for the entire Project as set forth in Section 10.1:

(b) Fails to prosecute the Work to completion thereof in an expeditious, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents,

(c) Fails to utilize full crews of labor and other personnel and a full complement of equipment needed to maintain the progress of the Work in accordance with the schedule;

(d) Breaches any of its other obligations under the Contract Documents, and does not rectify any such breach within five (5) days after written notice thereof, or if such failure is of such nature that it cannot reasonably be cured within seven (7) days, or such longer period as may be agreed upon in writing between the MSA and Design-Builder, if the Design-Builder does not diligently pursue a cure and achieve a cure within thirty (30) days;

(e) Stops the Work for a reason other than one expressly set forth in this Agreement, and does not rectify such breach within seven (7) days after written notice thereof;

(f) Makes a general assignment for the benefit of its creditors.

(g) Permits a receiver, the trustee or custodian to be appointed on account of its insolvency.

(h) Does not make prompt payments to its Trade Contractors, Subcontractors or suppliers, except for hold backs based on bona fide claims.

(i) Files a petition for relief under an applicable Bankruptcy Code, or

(j) If a petition for relief is filed against Design-Builder by its creditors under an applicable Bankruptcy Code and such petition is not vacated within sixty (60) days thereafter.

(k) Fails to perform within the time specified herein or any extension thereof.

(l) Fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Project Manager may authorize in writing) after receipt of notice from the Project Manager specifying such failure,

Section 22.3 Termination for Default

Upon an Event of Default, MSA may, subject to the provisions of paragraph (3) of this Section, by written notice of default to the Contractor, terminate the whole or any part of this contract.

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

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

subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

22.3.3 If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of MSA, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

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

22.3.5 The rights and remedies of MSA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

22.3.7 Prior to and after the Contract completion date, MSA may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of MSA, is behind schedule so as not reasonably to be able to complete the contract on time. Due account may be taken of excusable delays and for delays for which MSA or its direct agents or contractors are responsible subject to the provisions of Section 12.2. After MSA's acceptance of the GMP, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.

22.3.8 If the Design-Builder refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, MSA may, by written notice to the Design-Builder, terminate the Design-Builder's right to proceed with the work or the part of the work as to which there has been delay. In this event MSA may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Design-Builder's right to proceed with the work is terminated, the Design-Builder and its sureties shall be liable for any damage to MSA resulting from the Design-Builder's refusal or failure to complete the Work within the specified time.

ARTICLE 23 SUSPENSION OF WORK

Section 23.1 Suspension of Work

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

23.1.2 If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of MSA in the administration of this contract, or by MSA's failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any provision of this contract.

23.1.3 No claim under this Section 24 shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Project Manager in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the contract.

ARTICLE 24 MBE LIQUIDATED DAMAGES

24.1.1 This contract requires the Design-Builder to make good faith efforts to comply with the MBE Program and contract provisions with respect to subcontractors. The MSA and the Design-Builder acknowledge and agree that the MSA will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff

resources, if the Design-Builder does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. Because the precise dollar amount of such damages is impossible to determine, Design-Builder agrees upon a determination by MSA that Design-Builder failed to comply with one or more of the specified requirements of the MBE Program, related contract provisions, or the prompt payment requirements, Design-Builder shall pay liquidated damages to MSA calculated as follows:

<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 Design-Builder'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.

Notwithstanding the use of liquidated damages, MSA reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

**ARTICLE 25
AUDITS BY OWNER & RECORD RETENTION**

25.1.1 Access to Design-Builder's Books and Records: The Design-Builder agrees that the owner or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, and records of the Design-Builder involving transactions related to this Agreement.

25.12 **Access to Trade Contractor's Books and Records:** The Design-Builder agrees to include in all Trade Contracts a provision to the effect that the Trade Contractors, Subcontractors and Suppliers agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years any pertinent books, documents, papers, and records of such Trade Contractors, involving transactions related to the Project.

25.13 **Retention of Records:** The Design-Builder shall retain and maintain all records and documents relating to this Agreement for three (3) years after final payment by the Owner hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Owner, including the Project Manager or designee, at all reasonable times

ARTICLE 26 DISPUTES

26.1.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement between the Design-Builder and MSA's Project Manager shall be resolved in accordance with this Article.

26.1.2 As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this 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.

26.1.3 A claim shall be made in writing and submitted to the MSA Project Manager identified in Section 28.19 for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

26.1.4 When a claim cannot be resolved by mutual agreement, the Design-Builder shall submit a written request for final decision to the MSA Project Executive identified in Section 28.19. The written request shall set forth all the facts surrounding the controversy.

26.1.5 The Design-Builder shall be afforded an opportunity to be heard by the Project Executive and to offer evidence in support of its claim.

26.1.6 The Project Executive shall render a written decision on all claims within ninety (90) days of receipt of the Design-Builder'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 ninety (90) days, the Project Executive shall notify the Design-Builder of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Design-Builder, 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.

26.1.7 The Project Executive's decision shall be final and conclusive without prejudice to the rights of the Design-Builder to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by Design-Builder as a result of the Project Executive's decision. Design-Builder 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 Work under the

Contract Documents. The applicable statute of limitations shall be extended until six (6) months following completion of the Work.

26.1.8 Pending resolution of a claim, the Design-Builder shall proceed diligently with the performance of the contract in accordance with the Project Executive's decision.

ARTICLE 27 STATE TERMS

Section 27.1 General State Terms

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

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

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

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

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

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

Section 27.2 Non-Discrimination Provisions

27.2.1 Nondiscrimination in Employment. Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment and to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

27.2.2 Commercial Nondiscrimination. As a condition of entering into this agreement, the company represents and warrants that it will comply with the State's Commercial

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

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

Section 27.3 Disclosures and Ethics

2731 Financial Disclosure. Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$200,000 or more during a calendar year shall, within 30 days of the time when the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

2732 Statement of Political Contributions. Contractor shall comply with the Election Law Article, Title 14 Subtitle 1, Md. Code Ann., which requires that a person doing public business with the State, shall file a statement with the State Board of Elections as provided in section 14-104. Generally, this applies to every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Election a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

2733 Anti-Bribery. Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

2734 Contingent Fees. Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

Section 27.4 Subject to Appropriations

27.4.1 If funds are not appropriated or otherwise made available to MSA to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall terminate automatically as of the beginning of the fiscal year for which funds are not available; 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 the Design-Builder and the MSA from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Design-Builder shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. The MSA shall notify the Design-Builder 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. Contractor may not recover anticipatory profits or costs incurred after termination.

Section 27.5 Drug and Alcohol Free Workplace

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

Section 27.6 Indemnification

27.6.1 Contractor shall be responsible for, and shall defend, indemnify and hold harmless the State of Maryland, and MSA and their members, officers, agents, and employees, and the Client against and from, any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, proceedings of any kind whatsoever, and costs of any kind or type (including but not limited to reasonable attorney's and expert's fees and costs), arising directly or indirectly from the Contractor's or its consultant's activities, or those of its subcontractors, sub-consultants, employees, and invitees, in connection with the work. The foregoing shall not apply to the gross negligence or willful misconduct of MSA pursuant to the Maryland Tort Claims Act, State Government Article -Title 12 subtitle 1.

Neither the State nor MSA shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance of this Contractor.

Section 27.7 Tax Exemption

27.7.1 MSA is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax except as provided in § 11-242 of the Tax General Article of the Maryland Annotated Code.

Section 27.8 No Delegation of Authority

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

Section 27.9 Governmental Immunities

27.9.1 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 27.10 Tort Claims Acts

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

Section 27.11 Independent Contractor Status

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

Section 27.12 Remedies Cumulative

27.12.1 The remedies of the MSA provided in this Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in the MSA, under law or at equity, all of which rights and remedies are specifically reserved by the MSA; and the failure to exercise any remedy provided for in this Agreement shall not preclude the resort to any such remedy for future breaches by the Design-Builder; nor shall the use of any special remedy hereby provided prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in the MSA for the recovery of damages or otherwise in the event of a breach of any of the provisions of this Agreement to be performed by the Design-Builder.

Section 27.13 No Arbitration

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

Section 27.14 Approvals

27.14.1 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 have been obtained. No Work shall be commenced hereunder until MSA notifies the Design-Builder that such approvals have been obtained.

Section 27.15 No Third Party Beneficiaries

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

Section 27.16 Owner Approval

27.16.1 Whenever provision is made herein or in the Contract Documents for the approval or consent of the MSA, or that any matter be to MSA's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by MSA in its sole discretion and determination.

Section 27.17 Time of the Essence

27.17.1 Time is of the essence in the performance of the obligations of the Design-Builder under this Agreement.

Section 27.18 Counterparts

27.18.1 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 27.19 Contract Representatives

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

MSA Project Manager:

MSA Project Executive:

Section 27.20 Notice

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

WAYNE K. CURRY CIVIC PLAZA DESIGN-BUILD AGREEMENT

If to the Owner:

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

If to the Design-Builder:

Company Name
Address
City, State Zip Code
Attention: 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.

[Remainder of Page Intentionally Left Blank]

WAYNE K. CURRY CIVIC PLAZA DESIGN-BUILD AGREEMENT

This Agreement is entered into the day and year first written above.

ATTEST: OWNER:
MARYLAND STADIUM AUTHORITY

By: _____ By: _____(SEAL)
Michael J. Frenz, Executive Director

Approved for legal form and sufficiency

Amy K. Mataban
Assistant Attorney General
Maryland Stadium Authority

ATTEST: DESIGN-BUILDER

By: _____ By: _____(SEAL)
Authorized Officer

Negotiated Guaranteed Maximum Price

Attachment K

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 L

Corporate Diversity Affidavit and Addendum

CORPORATE DIVERSITY ADDENDUM

Effective August 18, 2022

Instructions: Pursuant to § 11-101 of the Tax-Property Article, certain entities must provide a Corporate Diversity Addendum, which contains certain diversity data specified by Code of Maryland Regulation (“COMAR”) 24.01.07. To determine whether you must provide the Corporate Diversity Addendum, please complete Worksheet A.

Failure to complete the Addendum or failure to meet the criteria therein, may prohibit you from receiving certain State benefits. For more information, refer to COMAR 24.01.07.

Please be aware, the information you include in the Corporate Diversity Addendum may be shared with other Maryland State agencies.

Worksheet A

1. Are you an entity that is required to be in good standing with the State Department of Assessments and Taxation (“SDAT”), and meets the following definition:

(1) A commercial enterprise or business that is formed in the State or registered with SDAT to do business in the State; or (2) a corporation, foundation, school, hospital, or other legal entity for which none of the net earnings inure to the benefit of any private shareholder or individual holding an interest in the entity?

Yes – Proceed to Question 2

No – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.

2. Check the appropriate box if you are any of the following types of entities:

Sole Proprietor

Limited liability company (LLC) owned by a single member

Privately held company if at least 75% of the company’s shareholders are family members

Entity that (1) has an annual operating budget or annual sales less than \$5,000,000; and (2) has not qualified for or applied for, and does not intend to apply for, a State benefit, as defined below

Did you check at least one box?

Yes – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.

No – Proceed to the Corporate Diversity Addendum on Page 3.

“State benefit” means (1) a State capital grant funding totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); (2) State tax credits totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); or (3) the receipt of a State contract with a total value of \$1.0 million or more. “State contract” means a contract that (a) resulted from a competitive procurement process and (b) is not federally funded in any way.

AFFIDAVIT (I)

UNDER PENALTIES OF PERJURY, I hereby swear that the entity submitting this report is not required to submit the Corporate Diversity Addendum.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity's representative completing this Affidavit (print clearly):

Title: _____

Signature: _____

Date: _____

CORPORATE DIVERSITY ADDENDUM

Instructions: If you are required to provide the Corporate Diversity Addendum, completing Affidavit (II) on Page 4 is mandatory. A response to both items is required. Failure to provide a complete response to either of the two items may render the entity ineligible for certain state benefits. For more information, refer to COMAR 24.01.07.

I. A response to Item I is required. However, the content of your response has no bearing on eligibility for State benefits. Select below the underrepresented communities which are represented on this entity's board or in executive leadership. Select all that apply.

- Alaska Native
- Asian-Pacific Islander
- Black or African-American
- Hispanic or Latino
- Native American
- Native Hawaiian
- One or more of the racial or ethnic groups listed above
- None of the above

II. Check the box next to the following Corporate Diversity indicators that pertain to this entity. *Note that references to underrepresented communities refers to communities listed in Item I above. The examples provided are intended to be representative, not exclusive.* Select all that apply.

1. Entity maintains written workforce diversity, equity, and inclusion (“DEI”) policies.
2. Entity offers DEI training to its workforce.
3. Entity assigns a senior-level employee as responsible for oversight and direction of the entity's DEI efforts.
4. Entity reports performance of its workforce DEI programs on its website.
5. Entity includes DEI objectives in performance plans of its managers.
6. Entity publishes information on its website about its DEI commitments and efforts.
7. Entity provides career advancement training/opportunities for employees, including members of underrepresented communities.
8. Entity collaborates with educational institutions, or is an educational institution, serving significant or predominant student populations or affinity groups from underrepresented communities (e.g., career fairs, scholarships, internships, apprenticeships).
9. Entity has a supplier diversity policy that provides business opportunities to diverse suppliers, including businesses owned by members of underrepresented communities, such as State-certified Minority Business Enterprises (“MBEs”).
10. Entity publicizes its procurement opportunities to encourage participation from businesses owned by members of underrepresented communities.
11. Entity measures percentage of contract dollars awarded to businesses owned by members of underrepresented communities, including MBEs.
12. Entity provides support and outreach to underrepresented communities and/or organizations that represent underrepresented communities.

Only entities that meet at least 33% (4) of the Corporate Diversity Indicators above, by checking all the applicable boxes, qualify to receive a State benefit.

AFFIDAVIT (II)

UNDER PENALTIES OF PERJURY, I declare that I have examined this Corporate Diversity Addendum, and to the best of my knowledge and belief, it is true, correct, and complete.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity's representative completing this Affidavit (print clearly):

Title: _____

Signature _____ Date _____

Penalties for Submitting False Information. If information provided by the entity in this form or by other means is materially false, the entity and the individual providing the false information may be subject to criminal prosecution for perjury, procurement fraud, and other crimes and may be subject to debarment, and all State benefits or contracts to the entity made in reliance upon the inaccurate form or other information may be void or subject to termination for default. See COMAR 24.01.07.

Attachment M

MBE Goal Setting Factors

MBE Participation Goals Factors

Potential Subcontracting Opportunities	NAICS Codes	Number of MBE Firms Potentially Available			
		Total	Local	African American	WBE
Electrical	238210; 423610	538	340	144	416
Earthwork	238910	355	177	102	269
Utilities	237110	195	92	56	140
Landscaping	561730	268	150	95	212

MBE Participation Goals Factors - Design & Pre-construction

Potential Subcontracting Opportunities	NAICS Codes	Number of MBE Firms Potentially Available			
		Total	Local	African American	WBE
Cost Estimating	236220	10<	5<	5<	5>
Architectural	541310/541340	150<	100<	45<	75<
Mechanical Engineering	541330	50<	5<	15<	10<
Structural Engineering	541330/238120	145<	20<	45<	35<
Electrical Engineering	541330	70<	5<	30<	10<
Civil/Landscaping Engineering	541330/237990	145<	90<	50<	50<
Geotechnical Engineering	541330/541380	85<	55<	25<	30<