



STATE HIGHWAY  
ADMINISTRATION

*Maryland Department of Transportation*

*State Highway Administration  
Baltimore, Maryland*

Contract No. PG6185470

F.A.P No. NOT APPLICABLE

**Competitive Sealed Proposal Procurement  
Request for Proposals (RFP)  
Construction Management at Risk (CMAR)**

**May 24, 2021**

**MD 4 (Pennsylvania Ave) at Suitland Parkway  
Interchange Improvements  
Prince George's County**

Disadvantaged Business Enterprises (DBE) are encouraged to respond to this Solicitation Notice.

The State Highway Administration will only be responsible for the completeness of documents, including all addenda, obtained directly from BidX.com.

Failure to complete the Addendum Receipt Verification Form may cause the bid to be irregular.

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## I. Introduction

The Maryland Department of Transportation State Highway Administration (MDOT SHA) is seeking the services of a qualified Contractor for a Construction Management at Risk (CMAR) contract as defined in the Code of Maryland Regulations (COMAR) 21.05.10. The contract will be procured using the "Competitive Sealed Proposals" procurement method as defined in COMAR 21.05.03.

CMAR is a contracting method that involves the Contractor in the Design and Construction phases of a project. The intent is to form a partnership with the owner (MDOT SHA), the Designer working for MDOT SHA, and the Contractor.

The goals of partnership are to mitigate risk, improve the Construction schedule, streamline the Design process, improve the decision-making process with better information, and develop a project that adheres to the budget. An important role of the Contractor is to evaluate the Constructability of the Design plans to reduce risk in all phases with innovative approaches to meet budget goals. We anticipate the involvement of the Contractor will help reduce errors in Design, improve the overall Constructability of the project and support the Practical Design process.

The Integrated Project Team (MDOT SHA, the Designer, and the Contractor) collaborates to deliver the project in less time, at a lower cost, and meet the project goals. The Integrated Project Team offers:

- Provision of information on constructability, staging, and other Design input.
- The skills and knowledge to estimate the quantities of materials, labor, and equipment needed for Construction.
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the project and estimate costs, duration, and sequence of these tasks.
- An understanding of the availability, cost, and capacities of material, labor, and equipment.
- Experience with work in environmentally sensitive areas.
- The skills and knowledge to identify potential risks (including financial risks) and methods to mitigate them during the Design process.
- The skills to work collaboratively with MDOT SHA, the Designer, and the project stakeholders throughout the Design and Construction process.
- A Contractor who shall provide MDOT SHA with a preliminary estimating model for estimating project costs. The accepted estimating model will serve as a basis for all Opinion of Probable Construction Cost (OPCC) estimates in the program and development of the Guaranteed Maximum Price (GMP) at agreed upon Design milestones.

During the Design process, the Contractor works collaboratively with the MDOT SHA Project Team and the Designer to:

- Implement the risk management strategy, develop and monitor a Risk Register as needed.
- Continually update, at regular intervals, the project estimate and Construction schedule.
- Lead the development of an open cost model for the Independent Cost Estimator (ICE) so that assumptions, contingency, and approach to the estimate are similar.
- Develop and formulate a Subcontracting Plan to integrate Subcontractors, including local, small, minority, and disadvantaged businesses, in the Construction phase.
- Participate in up to two formal reviews of the Design at designated Design milestones for each section, phase, or Construction package.
- Participate in risk assessment and mitigation workshops, if necessary, at agreed upon milestones.
- Provide up to three progressively refined Construction cost estimates at designated Design milestones for each section, phase, or Construction package.
- Continually provide informal input on constructability, value analysis, and cost as requested.
- Provide an open-book examination of an open cost model by MDOT SHA.
- Prepare GMP Proposals to MDOT SHA with appropriate backup documentation for all Construction, early work, and procurement packages.
- Develop, propose, and track potential innovations for incorporation into project Construction.
- Coordinate with all project stakeholders in conjunction with MDOT SHA and the Designer. This will include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public.

If the Contractor is awarded the Construction services through a contract amendment, their role will be to construct the project within the GMP and propose solutions that will help achieve the goal of staying within the budget. If the project cannot be delivered within the budget, MDOT SHA retains the right to cancel the project, reduce the scope, or deliver the project by other means.

If MDOT SHA chooses to deliver the project by other means, the selected Contractor **will not** be permitted to submit a bid.

Early procurement or Construction work may be considered for acquisition of long lead items or to complete early Construction tasks that can be completed and turned

over to another Contractor, should a GMP for final Construction not be agreed upon. Early utility or Construction work may be considered with the understanding that early phases are not a guarantee of selection for final Construction. Early phases must be independent and severable from the final Construction package, with a well-defined end point. Construction will not begin until a GMP has been accepted for a substantially complete Plans, Specifications & Estimates (PS&E) package.

A. Contact Provisions, General Provisions, Terms and Conditions and Technical Requirements

All Construction work for this project shall be in accordance with the current edition of the SHA Standard Specifications for Construction and Materials, project specific Special Provisions, the “standard” Special Provisions, the Special Provisions Inserts, and all provisions included in the RFP’s appendix.

DBE goals, wage rates, and number of persons, if any, to be trained will be provided for all Construction phases prior to the submittal of any GMP.

B. Independent Cost Estimator (ICE)

The ICE is an independent party hired by the Administration to prepare a series of detailed estimates. These estimates will be performed independent of the Contractor and the Administration’s Design team and will be used as a basis for cost comparison to the OPCC and the GMP.

C. Opinion of Probable Construction Cost (OPCC)

The OPCC is the actual Construction cost to the Contractor to build all aspects of a Construction package. These are required at established milestones for each phase, procurement, or Construction package.

D. Guaranteed Maximum Price (GMP)

The GMP is the total itemized dollar amount agreed upon between the Contractor and the Administration for the Cost of Construction of the project excluding the fee for Preconstruction services. It shall include all permitting, Construction, labor, equipment and materials and all incidentals necessary to complete the Construction of this project.

The GMP amount that will be incorporated into the Construction contract amendment will be agreed to between MDOT SHA and the Contractor. A GMP is the sum of the Cost of Construction for a sufficient Plans, Specifications, and Estimates package. The Cost of Construction will be agreed upon with pay items and assumptions. Payment for the Construction of the project will be paid through an agreed upon work breakdown structure.

The MDOT SHA anticipates initiating GMPs based on 90% or greater complete contract documents and intends to establish a GMP after a reevaluation of the NEPA

decision document has been signed. Multiple sections, phases, or Construction package and GMPs may be developed and accepted during the Design and Construction phases of this project. MDOT SHA reserves the right not to award any part(s) or all of the Construction Services. The selected proposer shall deliver to MDOT SHA a proposed GMP and GMP Supporting Documents for an appropriate Long Lead Time Procurement (LLTP) or Construction phase.

Except for change orders approved by MDOT SHA, a GMP will not be increased. The Contractor assumes all risk with the performance of the work, including management of its Subcontractors, suppliers, and any associated cost impacts over and above a GMP.

A GMP proposal can be offered up to three times for any phase or Construction package. After the third and final attempt at a GMP acceptance, MDOT SHA reserves the right to prepare the PS&E package for advertisement.

MDOT SHA may consider establishing a risk-sharing pool with the Contractor during the Design phase that, if adopted, would be incorporated into the Contract. The purpose of the risk-sharing pool is to develop a budget for items foreseen at the time of submitting a GMP but not detailed enough for inclusion in the GMP. Any and all items fitting this category will be identified separately from the GMP and will be monitored for progress and cost. The actual process will be agreed upon as part of the Contract amendment for Construction.

## **II. Scope of this RFP for CMAR Services Selection**

This "Competitive Sealed Proposals" procurement method is a one step process that includes a Technical Proposal and a Price Proposal. The Administration is seeking responses to this RFP from Contractors who are qualified and prepared in all respects to undertake the Preconstruction Services and Construction of this project.

The MDOT SHA is soliciting written Technical Proposals and Price Proposals from qualified general Contractors to provide services for, but not limited to:

- Review all as-builts, conceptual Design, and site conditions.
- Attend the Project Scoping/Partnering Workshop, Project Team Meetings, Milestone Meetings, Long Lead Time Procurement (LLTP) GMP, or Construction GMP reconciliation meetings with the Project team as necessary.
- Formulate and evaluate alternative designs, systems, and materials.
- Provide input on accelerated Construction techniques.
- Provide Constructability input into the project.
- Provide cost estimates of the alternatives to be evaluated that shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. The Contractor shall develop the

OPCC on the designs prepared by the Designer at the completion of any agreed upon Milestone.

- Evaluate the alternatives on the basis of costs, Construction schedules, availability of labor, equipment, and materials, and Construction feasibility in the form of Constructability Reports.
- Prepare written procurement reviews for materials that could be procured by the Administration or the Contractor ahead of any Construction Phase.
- Prepare written reports at the end of any Design Milestones summarizing the Value Analysis activities accomplished and any recommendations developed within each phase.
- If OPCCs and/or prices received for the Work contained in any Work Package cause the anticipated cost of the Work to exceed the then current OPCC, any LLTP GMP, or any Construction GMP, the Contractor shall, at no additional cost to the Administration unless caused by an increase in the Contractor's Work requested by the Administration, provide additional Value Analysis services in conjunction with any and all appropriate items in the OPCC, any LLTP GMP, or any Construction GMP for the Work.
- Lead Value Analysis workshop(s) at agreed upon Milestones to coordinate estimating tasks, bring multidiscipline cost/Construction experts to evaluate alternative designs, systems, and materials. This Work includes the submittal and ongoing evaluation of Value Analysis Proposals if required.
- Develop and document a Contracting Plan to meet DBE contract goals on all Construction phases, including compliance with COMAR 21.05.10.05.
- Prepare preliminary Construction schedules and phasing alternatives.
- Collaborate with the Project Team to develop a Risk Management Plan, perform risk assessments, and prepare and update a Risk Register.
- Collaborate with the Project Team to develop an Innovation Tracking and Performance Report.
- Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.
- Coordinate with MDOT SHA and the Designer throughout the Preconstruction phase through a combination of on-site meetings, Design meetings, conference calls, and workshops.
- Participate with MDOT SHA and the Designer in the Stakeholder outreach program. This will include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public.

### **III. Scope of Work**

#### **A. Project Description**

MD 4 (Pennsylvania Avenue) in Prince George's County is a heavily traveled, four-lane north-south corridor. The interchange of MD 4 at Suitland Parkway is a break-out project from the planning study of the MD 4 corridor between I-495 and MD 223. The proposed interchange configuration is a diamond interchange with a flyover ramp to accommodate the heavy left-turn movement from MD 4 northbound to Suitland Pkwy westbound; the flyover will be a two-lane free flow directional ramp. The project proposes to lower MD 4 approximately twenty-five feet at Suitland Parkway to establish grade separation at the intersection. As part of this interchange design, MD 4 will be two-lane section open with room in the median for an additional future lane.

Improvements to Suitland Parkway will be limited to deceleration and acceleration lanes. The portion of Presidential Parkway (opposite of Suitland Parkway) to the east of MD 4 will be modified and reconstructed to accommodate the change in profile and the acceleration and deceleration lanes from the interchange ramps. It will be realigned to be tangent with Suitland Parkway. An at-grade intersection will be designed to connect Suitland Parkway Extended with Presidential Parkway on the Prince George's Master Plan alignment.

The work will consist of the following:

- (a) Traffic control plans
- (b) Drainage design
- (c) Open section roadways
- (d) Stormwater management ponds
- (e) Traffic signals, signing and marking
- (f) Temporary roadway construction
- (g) Three bridges on the flyover
- (h) One bridge on Suitland Parkway
- (i) Widen one bridge on Suitland Parkway
- (j) Retaining wall construction
- (k) Landscaping
- (l) Lighting
- (m) Utility work

This project is a re-advertisement. It was previously advertisement in Fall 2016; however, MDOT SHA terminated the contract for convenience in August 2020. Therefore, the project is partly constructed. Part of the work done consist of minimum grading along Presidential Parkway, installation of temporary and permanent stromdrain structures, installation of SWM facilities, and masonry on an existing bridge. Also, as part of the previous contract, the structural steel bridge is already fabricated. Additionally, drainage pipe, drainage structures, sign structures, lighting, signalization, and other materials such as permanent piles, concrete barriers, and bridge joints are already ordered fabricated, and stored for the project.



## B. Project Goals

The project is intended to address the following goals:

- 1) Minimize project construction costs within the current budget.
- 2) Minimize project delivery time.
- 3) Utilize temporary pipes and drainage structures already order and stockpile.
- 4) Utilize structure steel bridge, sign structures, lighting and signalization already order and stockpile.
- 5) Improve safety and relieve congestion
- 6) Minimize inconvenience and impacts to the traveling public.
- 7) Facilitate a collaborative partnership with all members of the Project Team and stakeholders.

## C. Project Key Issues

### Sequence of Work

- Develop a sequence of construction to maximize productivity. This includes a flexible Erosion and Sediment Control (E&SC) plan.

### Maintenance of Traffic (MOT)

- Provide safe and efficient maintenance of traffic and minimize impacts to the traveling public.
- Maintain access to developments.
- Maintain the temporary closure at Joint Base Andrews (JBA) North Gate.
- Have a flexible MOT Plan in case of heightening restrictions at JBA.
- Ensure signage in the plans is updated and accounts for all access points and developments.

### Utilities

- Ensure no impacts or minimize impacts to the relocated utilities to maximum extend practical.
- Utility coordination with Washington Suburban Sanitary Commission (WSSC) to address completion of the relocated waterline.

### Right-of-way

- Minimize acquisitions to the extent practical.

### Environmental

- National Environmental Policy Act (NEPA) is approved.
- The National Park Service owns Suitland Parkway, which is on the National Register of Historic Places.

### Permits Status

- No significant changes to permitting; however, a comprehensive review and revision of the E&SC plans are needed to address sequencing and constructability issues.
- Coordination with Maryland Department of Environment (MDE) for a new MDE Authorization Letter and Corps of Engineer (COE) permit.

#### Key Stakeholders

- Prince George's County
- Developers (Wood Property, Westphalia Developer, and Smith Farm Home)
- National Park Service
- Joint Base Andrews,
- Utility companies (Washington Suburban Sanitary Commission)

#### D. Services to be provided by the Contractor

The Contractor is considered part of the Design team. As part of the Design Team, the following services will be provided by the Contractor during the Preconstruction phase:

- Attendance and participation in the initial workshop
- Project site visit and inspection
- Identify project risks and mitigation measures
- Develop project schedule and tasks
- Analysis of project and Construction phasing
- Determine possible early delivery and long lead time items
- Attendance in monthly partnering progress meetings, milestone meetings, and stakeholder meetings,
- Providing progress reports monthly
- Coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners
- Development of project innovations
- Development of Construction cost model and attendance in review meetings
- Develop and calculate quantities
- Develop a DBE and Subcontractor plan
- Constructability reviews and reports at milestones
- Provide input on materials availability
- Develop Construction phasing plan
- Value Analysis Proposals
- Cost savings reviews
- Develop, update, and revise preliminary Construction schedule
- Develop OPCC estimates at each milestone and attend reconciliation meetings
- Notify MDOT SHA at what point GMP proposals can be prepared
- Prepare and submit GMP proposals
- Provide cost model and assumptions

- Reconcile Final GMP for each phase

E. Services to be provided by the Administration

The following services will be provided by the Administration the during the Preconstruction phase:

- Scheduling, facilitation, attendance, and participation in the initial workshop
- Identify project risks and mitigation measures
- Environmental Document review and preparation
- Develop project schedule and tasks
- Identify Design criteria and provide Design services
- Analysis of project and Construction phasing, including determination of acceptability of severable Construction packages
- Scheduling and facilitating monthly partnering progress meetings, milestone meetings, and stakeholder meetings
- Project management services
- Coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners.
- Identify Construction requirements
- Development of project innovations
- Provide Construction plans and specifications
- Develop and calculate quantities
- Develop Construction phasing plan
- Cost savings reviews
- Provide input into the preliminary Construction schedule
- Acquisition of Environmental Permits
- Acquisition of Right-of-Way
- Review Construction GMP proposals and compare them to the ICE estimate,
- Reconcile Final GMP for each phase
- Approvals for storage of material for any long lead materials

F. RFP Package

MDOT SHA has provided the below pertinent documents. Copies of these documents may be obtained on eMaryland Marketplace Advantage website.

1. Copy of this RFP
2. Supplemental Information
  - a. NEPA Documentation from Project Planning – Finding of No Significant Impact Reevaluation
  - b. Plans (2015 – with Flyover, 2016 – Without Flyover)

- c. Approved Permits
- d. List of ordered project materials
- e. Geotechnical Boring Information

#### **IV. CMAR Process for Construction**

##### **A. Preconstruction Services During Design Phase**

The selected Contractor will be awarded a contract, prepared by and administered by MDOT SHA. The cost of the contract will be based upon the CMAR Preconstruction Fee submitted as part of the Price Proposal as defined in Section XIII of this RFP. The requirements for the Scope of Work of the contract are outlined in Section III of this RFP.

##### **B. Contractor Submits Price for Project (Early Procurement)**

The Contractor may be asked to procure long-lead materials that are in short supply or require longer than desired lead times from purchase to delivery. The Administration may also procure through the Contractor such services as pavement cores or other investigations to facilitate the Design. The Administration may choose to exercise this option if the early procurement saves significant Construction time, money or avoids potential delays once the project begins.

If the Administration elects to use this early procurement option, it proceeds as follows:

- The Contractor shall prepare a price to supply the item(s), including all other costs associated with the procurement (such as transportation, storage, etc.). This price is only for purchased items and should not include mobilization for Construction or other unrelated costs.
- The Contractor shall submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the item(s). Upon opening the Contractor's price, the Administration will determine the acceptability of the price by comparing it to state averages, similar projects, the independent cost estimate, and the engineer's estimate. The Administration will evaluate if the GMP, Engineer's Estimate, and the ICE were within an acceptable tolerance for each item.

The Administration personnel reviewing these costs may include: The Project Manager, members of the Design team, an estimating consultant, FHWA representatives, and staff from appropriate MDOT SHA offices.

If prices are not acceptable, the Administration may enter into a process of risk identification that identifies price differences between the Contractor and the

Independent Cost Estimate. Following the resolution of these risk issues, the items may be re-priced. If this is not successful, MDOT SHA can accept the offered price or to procure the items later as part of the GMP process for the Construction project or by some other method.

The Construction contract amendment is prepared and executed to cover only the defined procurement services. Site preparation to support the procurement or additional procurement services may be part of this contract.

Every procurement phase shall be evaluated for a DBE goal. If the DBE goal is greater than zero, in order to be awarded the contract, the Contractor must submit commitments sufficient to reach the DBE goal or demonstrate good faith efforts to meet the goal.

C. Contractor Submits Price for Project (Early Construction Package)

If time and/or money can be saved by allowing the Contractor to start initial work prior to the completion of the total Design package, the Administration may ask the Contractor to prepare a lump sum or unit cost price for all or a portion of the work.

If the Administration elects to use this contracting option, it proceeds as follows:

- The Administration and the Contractor will agree upon a scope of work to accomplish this phase of the contract. The agreement may take the form of a set of plans, or it may consist of something less formal such as sketches, drawings, or written descriptions. Both parties must agree that the scope of work is clear and unambiguous.
- MDOT SHA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
- The Contractor will prepare a price to perform the agreed to scope of work. The price will be based on the estimating model and the most recent OPCC for the agreed scope of work.
- The Contractor will submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Contractor's price, the Administration will determine the acceptability of the price by comparing it to state averages, similar projects, the independent cost estimate, and the engineer's estimate. The team will evaluate if the GMP, Engineer's Estimate, and the ICE were within an acceptable tolerance for each item.
- If the DBE goal is greater than zero, at the time of price submittal, the Contractor will be required to submit commitments to DBE participants sufficient to meet the goal and/or demonstrate good faith efforts to meet the goal.

The Administration personnel reviewing these costs may include: The Project Manager, members of the Design team, an estimating consultant, FHWA representatives, and staff from appropriate MDOT SHA offices.

If the prices are acceptable, the Administration will prepare a Construction contract amendment for this portion of the work.

If the prices are not acceptable, the Administration may enter into a process of risk identification that identifies price differences between the Contractor and the Independent Cost Estimate. Following the resolution of these risk issues, the work may be re-priced up to two more times. MDOT SHA has the option to accept the revised price or to terminate the CMAR process and procure the Construction project by some other method.

D. Contractor Submits GMP Price for Project (Design is Complete)

When the Administration, the Designer, and the Contractor agree that the project has been designed to a sufficient level of detail to allow the Contractor to price the project accurately, the following procedure will be used:

- The Designer will produce a set of plans and specifications showing all work to be accomplished. The plans will also show all work performed under any previous Early Construction packages.
- MDOT SHA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
- The Contractor will prepare a price to perform the work shown. The price will be based on the estimating model and the most recent OPCC for the agreed scope of work.
- The Contractor will submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Contractor's price, the Administration will determine the acceptability of the price by comparing it to state averages, similar projects, the independent cost estimate, and the engineer's estimate. For each item, the team will evaluate if the GMP, Engineer's Estimate, and the ICE were within an acceptable tolerance.
- If the DBE goal is greater than zero, at the time of price submittal, the Contractor will be required to submit commitments to DBE participants sufficient to meet the goal and/or demonstrate good faith efforts to meet the goal.

The Administration personnel reviewing these costs may include: the Project Manager, members of the Design team, an estimating consultant, FHWA representatives, and staff from appropriate MDOT SHA offices.

If the prices are acceptable, the Administration will prepare a Construction contract amendment.

If the prices are not acceptable, the Administration will enter into a process of risk identification that identifies price differences between the Contractor and the Independent Cost Estimate. Following the resolution of these risk issues, the project will be re-priced up to two more times. MDOT SHA has the option to accept the revised price or to terminate the CMAR process and procure the Construction Project by some other method.

E. Contractor Builds Project

From this point forward, the work proceeds similarly as a Design-Bid-Build project as per the amended contract.

## V. Rules of Contact

The Procurement Officer is the Administration's single contact and source of information for this procurement.

The following rules of contact will apply during the contract procurement process, which begins upon the submittal of the Technical Proposal and Price Proposal, and will be completed with the execution of the contract. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, electronic mail (email), or formal written communication.

The specific rules of contact are as follows:

1. Section 11-205 of the State Finance and Procurement Article, Annotated Code of Maryland, prohibits and penalizes collusion in the State procurement process.
2. Unless otherwise specifically authorized by the Procurement Officer, a Proposer may contact the Administration only through the Procurement Officer and only in a letter format via email and not orally. The Proposer's contacts with the Administration will be only through a single representative authorized to bind the Proposer.
3. The Procurement Officer or its designee normally will contact a Proposer in writing through the Proposer's designated representative.
4. Neither a Proposer nor its agents may contact Administration employees, including Administration heads, members of the evaluation committee(s), and any other person who will evaluate proposals, regarding the project, except through the process identified above.
5. Any contact by a Proposer determined to be improper may result in disqualification of the Proposer.
6. The Administration will not be responsible for or bound by: (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Procurement Officer.

## **VI. Proposer Questions**

The Administration will consider questions submitted in writing by Proposers regarding the RFP, including requests for information and requests to correct errors. Project questions shall be submitted in a letter format via email with a return confirmation receipt. No verbal requests or personal visits will be honored. All written contacts shall be addressed to the **Procurement Officer**:

Eric Marabello, P.E.  
Director, Office of Highway Development  
MDOT State Highway Administration  
email address: PG6185470-MD4@mdot.maryland.gov.

Only emailed inquiries will be accepted. No additional information or clarification requests to any other Administration office, consultant, or employee will be considered. All responses shall be in writing and will be disseminated only by posting on eMaryland Marketplace Advantage (<https://emma.maryland.gov/>) website.

All responses to questions on the RFP and addenda to the RFP will be posted on this site. Responses to questions and addenda will not be mailed out.

Only requests received by 4:00 p.m. Eastern Time on the date specified in **Section XXII** will be addressed. Questions will not be accepted by phone. Questions, which will only be accepted from the primary or secondary contact must include the requestor's name, address, telephone number, email address, and the Proposer he/she represents.

A response to questions will be issued without attribution and posted sequentially on eMaryland Marketplace Advantage website. Multiple responses are anticipated. The last response will be posted no later than five (5) calendar days prior to the RFP due date.

Responses to all Requests for Information (RFI) not part of an addendum shall be considered contractually binding.

## **VII. RFP Addenda**

Interpretations, clarifications or modifications to this RFP will be made by Addenda. Only interpretations, clarifications, and answers to Addenda or such writings shall be binding on the Administration. Addenda will be disseminated only by posting on eMaryland Marketplace Advantage website.

## **VIII. Costs and Ownership of Documents**

Proposers are solely responsible for all costs and expenses of any nature associated with responding to this RFP, including attending briefing(s) and providing supplemental information.

All ideas and plans proposed as part of this RFP process will become the property of MDOT SHA.



All tracings, prices, plans, manuscripts, specifications, data, maps, etc., prepared or obtained by the Proposer as a result of working on this contract, will be delivered to and becomes the property of MDOT SHA.

## **IX. Compliance with Applicable Laws**

In connection with this RFP and the contract, Proposers will comply with all applicable laws in all aspects connected with the procurement process of this project and in the performance of the contract.

## **X. Restrictions on Participation**

§13-212.1 of the State Finance & Procurement Article contains various restrictions on participating in State procurements. Any questions regarding eligibility must be appealed to the Maryland State Board of Contract Appeals.

No official or employee of the State of Maryland, as defined under the General Provisions Article of the Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Contractor or an entity that is a Subcontractor on this contract.

No Proposer may use any persons meeting the above restrictions in any capacity, key staff or otherwise, on this contract. It is the responsibility of the Proposer to identify any potential ethics issues concerning its former MDOT employees and seek an opinion from the State Ethics Commission regarding any potential conflicts of interest. The Proposer shall provide certification in its cover letter that it is in compliance with State Ethics Laws prohibiting work on a matter in which a former MDOT employee participated significantly as a State Employee for the duration of this contract.

## **XI. Proposer Submission Requirements**

### **A. Responsibilities of the Proposers**

Before submitting a proposal, the Prospective Proposer is responsible for examining the RFP and materials furnished to each prospective Contractor. The Contractor is responsible for all site investigation and work necessary to submit proposals. The Contractor accepts responsibility that their Technical and Price Proposal sufficient to complete all Preconstruction services.

### **B. Duty to Notify if Errors Discovered**

Proposers shall not take advantage of any error, omission, or discrepancy in the RFP or related materials, including all Project information. If a Proposer discovers such an error, omission, or discrepancy, he shall immediately notify the Administration in writing; failure to do so notify shall constitute a waiver of any claim based upon such error, omission, or discrepancy. After such notification,

the Administration will confirm or modify the RFP in writing as the Administration determines may be necessary to fulfill the intent of the RFP.

C. Letter of Interest

A Letter of Interest (LOI), on official letterhead from the Contractor, notifying the Administration of the Contractor's interest in responding to this RFP, is requested to be delivered no later than **June 21, 2021, prior to 12 noon** (prevailing local time). The LOI must be delivered to the following email address:

[PG6185470-MD4@mdot.maryland.gov](mailto:PG6185470-MD4@mdot.maryland.gov)

D. Proposer Delivery Formalities

1. Organization of Proposal Submittals

Prospective proposers shall organize submittal of their Technical Proposal and Price Proposal to match the organization specified in this RFP.

a. Separate Proposal Packages

Proposal submissions shall consist of two separate sealed packages, a Technical Proposal as described in Section XII and a Price Proposal as described in Section XIII.

b. Technical Proposal

The Technical Proposal may be submitted in a container(s) of the Proposer's choice provided that the material is neat, orderly, and incapable of inadvertent disassembly. Technical Proposal shall be submitted and bound using a three (3) ring binder with all pages numbered consecutively. Each container shall be clearly marked as follows:

Proposer's Name

**Technical Proposal**

Contract No. PG61855470

Container \_\_\_\_ of \_\_\_\_

c. Price Proposal

The Price proposal shall be submitted on the Price Proposal Form supplied by the Administration. It shall be delivered in a sealed envelope capable of holding 8½" x 11" documents without folding and clearly marked as follows:

Proposer's Name

**Price Proposal**

Contract No. PG61855470

Container \_\_\_\_ of \_\_\_\_

d. Location and deadline for submittal of Technical and Price Proposals

Technical Proposals and Price Proposals must be delivered no later than **June 28, 2021, prior to 12 noon** (prevailing local time). The proposal must be delivered to the following location:

Office of Procurement and Contract Management  
Fourth Floor, C-405  
707 N. Calvert Street  
Baltimore, Maryland 21202

e. Number of Copies

One original and eight (8) copies of the complete Technical Proposal shall be submitted along with one (1) electronic copy PDF file on a CD or flash drive. A single original of the Price Proposal shall also be submitted.

2. Effect of Submitting Proposal

Signing of the Proposal Submission Form and Price Proposal Form and delivery of the Proposal represents (a) an offer by the Proposer to perform the Work for the price submitted within the time(s) specified in accordance with all provisions of this RFP and (b) the Proposer's agreement to all the provisions of the RFP and contract governing requirements and procedures applicable through execution of the contract.

By so signing the above-referenced terms and by delivering the Proposals, the Proposer makes the following affirmative representations:

- a. The Proposer has reviewed all documents and undertaken all investigations that could significantly impact the cost, timeliness, quality, or performance of the Work. Specifically, the Proposer has (a) carefully examined the RFP and all documents included or referenced therein, (b) become familiar with all applicable federal, state, and local laws and regulations, (c) visited the site and made all reasonable visual investigations, and (e) correlated the information obtained from the above examinations and investigations.

- b. The Proposer has given the Administration written notice of all errors, omissions, or discrepancies in the RFP in accordance with this RFP.
- c. The Proposer has determined that the RFP is generally sufficient to convey an understanding of all terms and conditions that could significantly impact the cost, timeliness, quality, or performance of the Work.

Price proposals are irrevocable for 180 days following the closing date for submission of Price Proposals or Best and Final offers if requested.

### 3. Withdrawals and Resubmittals of Proposals

A proposer may withdraw Proposals after delivery, provided the request for such withdrawal is made in writing or in person before the date and time set for submission of Proposals. The Proposer may revise and resubmit a Proposal so withdrawn before said date and time.

### 4. No Public Opening

There will be no public opening of Proposals. After the Proposal Date, all Proposals will be opened in the presence of two or more Administration employees and reviewed for completeness. A register of Proposals will be prepared that identifies each Proposer.

Neither the identity of any Proposer nor the register of Proposals will be publicly disclosed until after the Procurement Officer makes a determination recommending award of the contract.

## **XII. Technical Proposals**

**General:** The Technical Proposal submittal shall contain concise narrative descriptions and graphic illustrations, drawings, charts, plans, and specifications that will enable the Administration to clearly understand and evaluate the capabilities of the Contractor and the characteristics and benefits of the proposed technical solutions.

**Key Staff Personnel Identified in Proposal:** The Contractor shall utilize the key personnel identified in their Technical Proposal to manage the project throughout the Preconstruction phase as well as the Construction phase. Changes in Key Staff identified in the Technical Proposal must be approved in writing by the Administration, and replacement personnel must have equal or better qualifications than the Key Staff originally identified in the Technical Proposal. The format for replacement staff resumes must be in the same format as required for the Technical Proposal, including requirements thereof. The Administration shall be the sole judge as to whether replacement Key Staff members are acceptable.

**No Price Information:** No price information of any kind shall be included in the Technical Proposal submittal.

**Proposal Organization:** Organization of the Technical Proposal shall comprise six parts, meet the specified page limitation, and correspond to the outline as follows:

- A. Cover Letter
- B. Capability of the Proposer
- C. Project Approach
- D. Cost Estimating Approach
- E. Legal and Financial Information
- F. Appendix

**Format:**

- Paper. The Technical Proposal submittal shall be submitted on 8.5"-by-11" paper printed back to back where practical. Charts, exhibits, and other illustrative and graphical information may be on 11"-by-17" paper but must be folded to 8.5"-by-11", with the title block showing. All sheets, regardless of paper size, will be considered one page. Sheets printed back to back will be considered two pages.
- Type Font and Margins. The typeface of all narrative text shall be at least 12-pt, either Arial or Times New Roman font, and all page margins must be at least ½" from sides and 1" from top and bottom. All pages shall be sequentially numbered, not including the cover letter.
- Page Limits. The Technical Proposal submittal shall be limited to the number of pages defined below. No page limit will be imposed on the appendices, although the size of the Appendix should be kept within reason.
- Finding tools, such as tables of contents and page dividers shall be utilized to make the submittals easily usable.

**A. Cover Letter (Limit 2 Pages)**

A cover letter, signed by the entity that will be a signatory to the contract must:

1. Be addressed to the Procurement Officer, Eric Marabello, P.E., Director, Office of Highway Development.
2. Provide the names and the roles of all participants.
3. Identify a single, primary point of contact for the Contractor with address, phone number, fax number, cell phone number, and Email address where all communications from the Administration should be directed for the proposal and evaluation phases and duration of the contract. A secondary contact for the Contractor shall be included (with the above information) for use when the primary contact is not available. The primary and/or secondary contact must be available 24 hours a day for the duration of the Design and Construction activities and during normal business hours

during the proposal and evaluation phases. **The Administration prefers that the primary and secondary points of contact are key staff members that will be directly involved during the proposal development, evaluation phase, Design, and Construction stages.** In the event that the primary and secondary contacts are not assuming their responsibility until after the proposal and evaluation phases, the Contractor must identify the primary point of contact for the proposal and evaluation phases. At least one of the Key Staff members must be involved in all phases.

4. Include an affirmative declaration that, to the best of each Participant's knowledge and belief, the information supplied by said Participant is true and accurate.
5. Include a declaration that each Participant company(s) are prepared to provide the necessary financial, material, equipment, labor, and staff resources to perform the project.
6. Include a certification that the Contractor is in compliance with the State Ethics Laws prohibiting work on a matter in which a former State employee participated significantly as a State Employee for the duration of this contract.
7. Include a general authorization for the Administration to confirm all information contained in the Technical Proposal.
8. Include a declaration that no portions of the Capability of the Proposer, Project Approach, and Cost Estimating Approach sections of the Technical Proposal include confidential, proprietary information or trade secrets that should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. Or include a declaration identifying which portions are considered confidential, proprietary information, or trade secrets and provide justification why such materials, upon request, should not be disclosed after award of the contract.
9. Include a declaration that all addenda have been received by the Proposer. The Proposer is alerted to their responsibility to confirm that all team members have received all addenda. The Proposer is solely responsible for ensuring that their team has the correct information.

**B. Capability of the Proposer – SIGNIFICANT (Limit 10 Pages)**

1. Key Staff – Submit resumes of the following Key Staff, highlighting their relevant performance on similar type of projects. Provide detailed information, including project descriptions and job responsibilities. Discuss any licenses or certifications that are relevant to the Key Staff successfully completing their role on this project. The resumes of the Key Staff must identify the function the staff member will fulfill on this project. – **SIGNIFICANT**

- Project Manager – This position will be responsible for the overall Preconstruction, Construction, management, and coordination of the project. This person will be the main point of communication to the Project Team and shall be an employee of the prime Contractor or prime joint venture constituents. Shall have a minimum of fifteen (15) years of experience. Demonstrate relevant experience in Preconstruction, Construction, and project management of highway construction projects of similar scope and complexity.
- Construction Manager – This position will be responsible for managing Construction activities, coordination, scheduling, and ensuring that the Construction is completed in accordance with the project requirements. Shall have a minimum of ten (10) years of experience. Demonstrated relevant experience in managing Construction activities, coordination, and scheduling highway construction projects of similar scope and complexity.
- Cost Estimator – This position will be responsible for developing OPCCs and GMPs and participating in key meetings where price, risk, and assumptions are discussed. Shall have a minimum of ten (10) years of experience. Demonstrate relevant experience as a lead Cost Estimator, including experience in current local Construction pricing, experience in developing "take-off" quantities, and experience in identifying and mitigating project risk.

Resumes shall be a maximum of **one (1) page** each.

2. Team Past Performance – Provide descriptions of three relevant projects with major highway Construction elements that the prime Contractor or joint venture constituents have completed. Projects should be of similar scope and complexity as this project and demonstrate the team's ability to be successful in delivering this project. Provide, at a minimum, the following: – **SIGNIFICANT**
  - Project name and location
  - Owner/client including specific point of contact with telephone numbers
  - Project delivery method (Design-Bid-Build, Design-Build, Construction Management at Risk, or other)
  - Overall construction cost of the project, as applicable, including initial contract value, final contract value, and specific reasons for the difference
  - Overall schedule performance, as applicable, including initial completion date, final completion date, and specific reasons for the difference
  - Brief project description

- Discussion of what work, including any successful methods, approaches, and innovations, on the projects are relevant to this contract and why.

Construction projects must be open for the beneficial use of traffic. The Construction must have been completed within the last ten (10) years.

3. Provide an organizational chart showing the lines of communication and identifying participants who are responsible for major functions to be performed, and their reporting relationships in Preconstruction and Construction. The organizational chart shall reflect all Key Staff as identified in the RFP and reflect the number of hours per week the Key Staff will be dedicated to this project. The chart shall not exceed one page and maybe submitted on an 11" x 17" page. – **IMPORTANT**

### **C. Project Approach – CRITICAL (Limit 16 pages)**

#### 1. Preconstruction Approach – **CRITICAL**

- a. Collaboration – The CMAR process is based on principles of collaboration, cooperation, and trust between MDOT SHA, the design team, and the Contractor. Describe the Proposer's approach to accomplishing this objective. Discuss how you would support the Administration in involvement with stakeholders during the Preconstruction Phase.
- b. Design and Constructability Review – The Contractor's involvement during the Preconstruction phase of the project should help streamline the design process, reduce errors and omissions, improve constructability and quality, reduce the cost of construction to ensure it is within budget, and optimize the project delivery schedule. Describe the Proposer's approach to accomplishing these objectives on this project.
- c. Risk Management – Discuss the Proposer's approach to assisting the Project Team in managing risks. Describe the Proposer's approach to assisting the Project Team to develop and evaluate potential innovations. As part of your proposal, prepare an initial risk matrix for the project identifying what your team has identified as the most relevant risks, their potential impacts on the project, and a mitigation strategy for each.
- d. Proposed Technical Concepts – Your team may have some innovative ideas or technical concepts that could increase the likelihood of success and help balance the project goals. Describe these innovative ideas or technical concepts and how they may



further improve reaching project goals, including impacts on time, cost, and quality.

2. Construction Approach – **SIGNIFICANT**
  - a. Construction Sequencing – Discuss your proposed construction sequencing and schedule, including, but not limited to, maintenance of traffic, construction phasing, and independent work packages. Discuss factors that would affect the schedule, such as outside constraints, seasonal work, materials, equipment, labor availability, etc.
  - b. Construction Schedule – Describe the Proposer's construction schedule and any factors that could affect it. Include a schedule graphic outlining the major activities and their associated timeframes.
  - c. Stakeholder Coordination – Discuss how you will communicate with and minimize impacts to the various stakeholders throughout the construction of the project.

**D. Approach to Cost Estimating – SIGNIFICANT (Limit 10 pages)**

1. Estimating Environment – Discuss the Proposer's approach to providing an open and transparent estimating environment that will assure MDOT SHA is receiving a fair price for the work. – **CRITICAL**
2. Sample Estimate – Provide a sample estimate for Class 1 Excavation and for Maintenance of Traffic showing how the Contractor will breakdown direct costs such as labor, equipment, material, trucking, small tools, and supplies, etc., as well as the approach to applying indirect costs and markup associated with the items and any other detailed costs used to develop a fully loaded cost for the items for OPCC reviews and bid analysis. The costs and markups provided should be conceptual and will not be evaluated or considered "contractual." The purpose of this sample estimate is to demonstrate the Contractor's approach to estimating/bidding is open and transparent and will be evaluated for the structure of the breakdown rather than costs. – **SIGNIFICANT**
3. Contracting Plan – The Contractor has a minimum self-performance requirement of 50 percent. Discuss the approach to developing a subcontractor selection plan that will allow for the competitive solicitation of bids from quality subcontractors. How will the Proposer demonstrate the subcontractor's prices are competitive? What specific commitments will the Proposer provide to enhance DBE participation? Include a discussion on how the Proposer will comply with COMAR 21.05.10.05. – **IMPORTANT**

**E. Legal and Financial Information (Limit 2 pages)**

The structure of the Legal and Financial Information shall include:

1. Team Organization. Briefly describe the proposed legal structure of the team.
2. Liability. State whether the firms who will be a party to the prime contract with the Administration will have joint and several liability and how it is being apportioned.
3. Bonding Capability: Provide evidence that the Contractor is capable of obtaining a Performance Bond and a Payment Bond in accordance with the requirements in Maryland's July 2020 Standard Specifications for Construction and Materials, GP – Section 3 and appropriate for a Project Classification L as defined in Maryland's Standard Specifications for Construction and Materials, Section TC 2.01.

Such evidence shall take the form of a letter from a surety company indicating that such capacity is anticipated to be available for the contracting entity. Letters indicating "unlimited" bonding capacity are not acceptable. The surety company providing such a letter must be rated at least A- by two nationally recognized credit rating agencies or at least A-VII by A.M. Best & Company. The letter should recognize the firm's backlog and work in progress in relation to its bonding capacity. Note: the letter is excluded from the page limitation.

Note: A Proposal Guaranty will not be required in response to this RFP.

4. Describe the conditions surrounding any contract (or portion thereof) entered into by a firm who would be a party to this contract that has been terminated by cause or convenience or which required completion by another party within the last five years. Describe the reasons for termination and the amounts involved. Describe any debarment or suspension from performing work for the federal government or any state or local government against a firm that would be a party to this contract. Identify the owner's representative and contact information for any contracts the above applies. Indicate "None" to any and all of the above that does not apply to the firms who would be a party to this contract.

**F. Appendix (No page limitation)**

Copies of all addenda letters and responses to RFIs issued by the Administration shall be included in the Appendix. The Proposer may also include supporting information related to its Technical Proposal in the Appendix. This supporting

information, however, **will not** factor into the evaluation ratings and is considered additional reference information by the Administration.

**XIII. Price Proposals**

The sealed Price Proposal has two items.

A. CMAR Preconstruction Fee

The Proposer shall price Preconstruction Phase services for the scope of work as defined in this RFP. Pricing shall be a lump sum and shall be inclusive of all costs and all fees, profit and overhead. The fee only applies to Preconstruction phase services.

B. CMAR Management Fee Percentage

The Proposer shall state their CMAR Management Fee, identified as a percentage and carried out to two decimal places (e.g., 6.51%), which will be applied to all Construction phases. The CMAR Management Fee Percentage shall include all profit, general and administrative costs, regional and home office overhead, and other indirect costs. The following provides a breakdown of what is to be included and what is not to be included in the CMAR Management Fee Percentage:

<b>Included in CMAR Management Fee Percentage</b>	<b>Not Included in CMAR Management Fee Percentage</b>
Project Principal	Project Manager and Construction Manager
Home Office Support Staff	All on-site Construction Management Staff
Safety Staff	On-site Administrative Staff
Quality Control Support Staff	Direct Costs relate to Safety and Quality Control
Cost Estimator during Construction	Other projects direct costs such as materials, equipment, and labor
Profit	

The CMAR Management Fee Percentage shall not change regardless of the final amount of any GMP for Early Construction or Construction phases.

**A separate breakdown of the CMAR Management Fee Percentage will be provided by the Proposer showing the breakdown of all components used in establishing the percentage.** The intent of the CMAR Management Fee Percentage is to define the cost and level of effort for the Contractor to deliver the project within the GMP. The CMAR Management Fee Percentage shall exclude all Proposer costs and risks related to the performance of the construction work. Risk will be priced into sub-contracted amounts and into self-performed work as part of the GMP.

## XIV. Evaluation of Proposals, Opening and Selection

### A. Best Value Process

The Technical Proposal will be evaluated on completeness, and the pass/fail and technical evaluation factors identified in Section XII. An Evaluation Committee will determine the pass/fail status and overall technical rating of each Proposal. Once the overall technical rating has been determined for each Technical Proposal, the Price Proposal results will be provided to the Evaluation Committee, and trade-off analysis will be performed. The Evaluation Committee will prepare a recommendation to the Selection Officials indicating which Proposal is the most advantageous to the State (i.e., represents the best value). The Selection Officials, together with the Selection Committee, will then assess the Evaluation Committee's recommendation and make a final determination as to which Proposal is the most advantageous to the State considering the technical and price factors set forth in this document.

When determining which Contractor's submittal is the most advantageous to the State, **the Technical Proposal is significantly more important than the Price Proposal.**

### B. Evaluation of Technical Proposals

The following elements of the Technical Proposal will be evaluated and rated on their content, accuracy, and presentation.

- Capability of the Proposer – **SIGNIFICANT**
- Project Approach – **CRITICAL**
- Approach to Cost Estimating – **SIGNIFICANT**

The relative importance of the technical evaluation factors and subfactors, when noted, will be weighted based on the following criteria:

- Critical – Factors or subfactors weighted as Critical are approximately three times the relative importance of Important.
- Significant – Factors or subfactors weighted as Significant are approximately two times the relative importance of Important.

While some factors and subfactors may have more relative importance than others, all of the Administration's goals are necessary for project success. Proposers are cautioned not to overemphasize an approach of certain goals at the expense of other goals.

The following will be evaluated on a Pass/Fail basis and will be based on the clarity and completeness of the information provided. Each Proposal must achieve a rating of "Pass" on any "Pass/Fail" factor to receive further consideration. Failure to achieve a "Pass" rating on any "Pass/Fail" factor will result in the Proposal being rated Unacceptable. The Technical Proposal and Price Proposal will not be rated, and the Proposer will be disqualified.

- Legal and Financial Information

#### C. Completeness

The Procurement Officer may determine that a proposal is not reasonably susceptible for award, pursuant to COMAR 21.05.03.03B, if Proposals are not submitted with all required forms included in the Proposal Package, properly completed and signed (if required).

#### D. Evaluation of Technical Proposals

The Administration will assemble Evaluation Teams and an Evaluation Committee consisting of key staff from appropriate offices within the Administration to perform Technical Proposal evaluations. Each Technical Proposal will be broken down into individual Evaluation Factor sections. Each Evaluation Team will only be given the section or sections for each specific Evaluation Factor or Factors they are rating and not the Technical Proposal in its entirety. Each Leader of the Evaluation Team will be part of the Evaluation Committee with other appropriate key staff within the Administration. The Evaluation Committee will review each Evaluation Factor and determine an overall Technical Rating for each Technical Proposal.

#### E. Evaluation Factors

The Technical Evaluation Factors and the overall Technical Proposal will be rated by an adjectival (qualitative/descriptive) method. The following adjectival ratings shall be used in the evaluation of each technical evaluation factor and the overall technical rating of the Proposal:

**EXCEPTIONAL:** The Proposer has demonstrated a complete understanding of the subject matter, and the Proposal advances the Project goals to an exceptional level. The Proposal communicates an outstanding commitment to quality by a highly skilled team in all aspects of the Work. The Proposal outlines a strong approach to mitigating project-specific risks and inspires confidence that all contract requirements will be met or exceeded. The Proposal contains significant strengths and minor weaknesses, if any.

**GOOD:** The Proposer has demonstrated a strong understanding of the subject matter and the Proposal advances the Project goals to a high level. The Proposal communicates a commitment to quality by an experienced team in all aspects of the Work. The Proposal defines an approach to mitigating project-specific risks with little risk that the Proposer would fail to meet the requirements of the contract. The Proposal contains strengths that outweigh weaknesses.

**ACCEPTABLE:** The Proposer has demonstrated an adequate understanding of the subject matter, and the Proposal meets the Project goals. The Proposal communicates a commitment to quality Work by a qualified team. Project specific risks have been

identified, and the Proposer has a reasonable probability of successfully completing the Work. The Proposal contains strengths that are offset by weaknesses.

**UNACCEPTABLE:** The Proposer has not demonstrated an understanding of the subject matter, and the Proposal presents an approach that does not address the goals of the project. The Proposal fails to meet stated requirements and/or lacks essential information. The commitment to quality is not adequate, with Work performed by unqualified or unproven teams. Project specific risks are not addressed, and the Proposal generates little confidence that the Project requirements can be met. The Proposal contains deficiencies, significant weaknesses, and minor strengths if any.

In assigning ratings, the Administration may assign plus (+) or minus (-) suffix within the technical ratings of EXCEPTIONAL, GOOD, and ACCEPTABLE to better differentiate the ratings in order to more clearly differentiate the Proposals (e.g., "EXCEPTIONAL –" and "GOOD +").

The term "weakness," as used herein, means any flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. The term "deficiency" means a material failure of a proposal to meet an RFP requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Any Proposal that receives a rating of UNACCEPTABLE in one or more Technical Evaluation Factors will receive an overall Technical Proposal rating of UNACCEPTABLE.

The Technical Proposal will become part of the contract documents, and all ideas provided to the Administration are expected to be included in the Price Proposals. The Administration or successful Proposer may use ideas and approaches included in the technical proposal, excluding proprietary or protected information.

#### F. Evaluation of Price Proposals

The evaluation of the Price Proposal will be performed based on the information in Section XIII.

The Administration reserves the right to reject any Proposal as UNACCEPTABLE if it determines that the Price Proposal is unreasonable, including a determination that the Proposal is a potential detriment of the Administration.

#### G. Communications

The Administration may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals. This process will be initiated by the delivery of a written request from the Administration to the Proposer identifying the information needed and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely

received, the Proposer's ratings may be adversely affected, and/or Proposal may be declared Unacceptable.

The Administration may waive technical irregularities in the proposal of the Proposer that does not alter the quality or quantity of the information provided.

#### H. Competitive Range

The term "Competitive Range" means a list of the most highly rated Proposals, based on initial Technical Proposal ratings and evaluations of Price Proposals that are judged by the Procurement Officer to be reasonably susceptible of being selected for award. The Competitive Range is based on the rating of each Technical Proposal and evaluation of each Price Proposal against all evaluation criteria.

Proposals that would not be included in the Competitive Range and would be excluded from further consideration include:

- 1) Any Proposal that even after review of supplemental information or clarification provided by the Proposer in response to an Administration request, does not pass the pass/fail evaluation factors;
- 2) A Proposal that, after the initial evaluation, is rated lower than "ACCEPTABLE-" for any Technical Evaluation Factor.
- 3) Any Proposal that includes a Price Proposal that is considered to be Unacceptable.

The Administration will determine the Competitive Range after a careful analysis of the Technical and Price Proposals.

#### I. Discussions

The Administration reserves the right to make an award without Discussions. However, the Administration may, at its sole discretion, conduct Discussions (that is, written or oral exchanges) with the Proposers in the Competitive Range, with the intent of allowing the Proposers to revise their Proposals.

##### 1) Purpose

If the Administration decides to engage in Discussions, the areas of Discussions may include the following:

- A) Advising the Proposers of weaknesses, significant weaknesses, and/or deficiencies in their Proposals (relative to the RFP);
- B) Attempting to resolve any uncertainties and obtaining any significant additional understanding concerning the Proposal;
- C) Resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or the evaluation process;

- D) Providing the Proposers a reasonable opportunity to submit any further technical or other supplemental information to their Proposals;
- E) Facilitating execution of a contract that is most advantageous to the State, taking into consideration the technical and price factors discussed above.

## 2) Procedures

The following specific procedures will apply to Discussions:

- A) Discussions will only be conducted with Proposers in the Competitive Range. If Discussions are held, they will be held with all Proposers in the Competitive Range;
- B) Information disclosed by Proposers in the Competitive Range during Discussions will not be made public until after execution of the contract;
- C) Discussions may be written and/or oral, and more than one round of Discussions may be conducted; and
- D) No disclosure will be made of any information derived from a Proposal of, or from discussions with, another Proposer.

## 3) Prohibited Contact

During Discussions, Administration personnel involved in the acquisition shall not engage in the following conduct:

- A) Revealing a Proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a Proposer's intellectual property to another Proposer;
- B) Revealing a Proposer's price without that Proposer's permission. However, the Administration may inform a Proposer that its price is considered by the Administration to be unbalanced based upon the Scope of Work and may provide information regarding the analysis supporting that conclusion;
- C) Revealing the names of individuals providing references or information about a Proposer's past performance; or
- D) Revealing selection information in violation of the Administration's procurement policies and the laws of the State.

## J. Proposal Revisions



Although the Administration reserves the right to hold Discussions and request proposal revisions and Best and Final Offers (BAFO) when in the best interest of the State, the Administration is under no obligation to do so. The Administration may make its selection and award based on the initial Proposals as submitted.

At the conclusion of Discussions (if held), the Administration will request a proposal revision or BAFOs from all Proposers in the Competitive Range to provide Proposers an opportunity to revise their Proposals (both the Technical Proposal and Price Proposal), including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified to the Proposers by the Administration following initial evaluation of the Proposals. The request for proposal revision or BAFOs will allow adequate time, as determined by the Administration, for the Proposers to revise their Proposals. Upon receipt of the proposal revisions or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate.

The Administration may require more than one series of proposal revision submissions followed by request for a BAFO submission, but only if the Administration makes a written determination that it is in the State's best interest to conduct additional Discussions following receipt of proposal revisions or to change the Administration's requirements and require another BAFO submission.

#### K. Determination of Successful Proposer

In accordance with COMAR 21.05.03.03(F), award of the contract is to the responsible offeror whose proposal is determined to be the most advantageous to the State, considering the evaluation factors set forth in the Request for Proposals and the price. The Administration has determined that the proposal most advantageous to the State will be the Proposal with the best combination of the Technical and Price evaluations, which the Administration determines will provide the most successful project. When determining which Contractor's submittal is the most advantageous to the State, the Technical Proposal is significantly more important than the Price Proposal. Award may be made to the offeror with a higher technical rating even if its price is not the lowest. In the event that two overall technical ratings are the same (e.g., "GOOD" and "GOOD"), price alone will not be used as the determining factor. Once the overall technical evaluations have been completed, and the price revealed to the Evaluation Committee, a fully integrated trade-off analysis will be performed by the Evaluation Committee. In performing this trade-off analysis, the Evaluation Committee, chaired by the Procurement Officer, will consider the facts and circumstances of the procurement and utilize its technical judgment and discretion in considering strengths, weaknesses, and deficiencies of each proposal to determine a recommendation of most advantageous to the State. This recommendation will then be presented to the Selection Officials who, along with the Selection Committee, will utilize their technical judgment and discretion to make a final determination of most advantageous to the State considering all technical and price factors set forth in the Request for Proposals.

In order to be considered for award of the contract, a Proposal must pass all the pass/fail factors and receive at least an "ACCEPTABLE" on all technical evaluation factors.

NOTE: All materials, conferences, proposals, and other matters related to this project shall remain confidential until the contract is executed with the successful Contractor.

## **XV. Protests**

This solicitation and any subsequent contract will be administered in accordance with Maryland's Procurement Law, including the dispute provisions of the State Finance and Procurement Article of the Maryland Code. Protests must be resolved pursuant to COMAR 21.10.02.

A protest must be in writing and filed with the Procurement Officer. Oral objections, whether or not acted upon, are not protests.

Time for Filing:

A protest based on alleged improprieties in the solicitation, which are apparent before the closing date for receipt of initial proposals, shall be filed before the closing date for receipt of initial proposals. A protest based on alleged improprieties that did not exist in the initial proposal, but which are incorporated in the solicitation, shall be filed not later than the next closing date for receipt of proposals following the incorporation. For this procurement, the RFP Due Date is considered the closing date for receipt of initial proposals.

Any other protest shall be filed no later than seven (7) days after the basis for the protest is known or should have been known, whichever is earlier.

Content of Written Protest

Name and Address of Protestor.

Contract number.

Reasons for protest.

Supporting exhibits, evidence or documents to support protest.

All offers/proposals shall be irrevocable until final administrative and judicial disposition of a protest.

## **XVI. Rights and Disclaimers**

The Administration may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP. The Administration reserves the right, in its sole and absolute discretion, to:

1. Reject any or all Sealed Proposals;
2. Issue a new RFP;
3. Cancel, modify, or withdraw the RFP;
4. Issue addenda, supplements, and modifications to this RFP;
5. Modify the RFP process (with appropriate notice to Proposers);

6. Appoint an Evaluation Committee and Evaluation Teams to review Sealed Proposals,
7. Approve or disapprove substitutions and/or changes in Sealed Proposals;
8. Revise and modify, at any time before the RFP due date, the factors it will consider in evaluating Sealed Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Administration will provide an addendum setting forth the changes to the evaluation criteria or methodology. The Administration may extend the Sealed Proposals due date if such changes are deemed by the Administration, in its sole discretion, to be material and substantive;
9. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Sealed Proposals;
10. Waive weaknesses, informalities, and minor irregularities in Sealed Proposals;
11. Disqualify any team that changes its Sealed Proposals (following submittal) without Administration written approval;
12. Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
13. Refuse to receive or open a Sealed Proposal, once submitted, or reject a Sealed Proposal if such refusal or rejection is based upon, but not limited to, the following:
  - i. Failure on the part of a Proposer to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Administration (or State);
  - ii. Default on the part of a Proposer under previous contracts with the Administration (or State);
  - iii. Unsatisfactory performance by the Proposer under previous contracts with the Administration (or State);
  - iv. Issuance of a notice of debarment or suspension to the Proposer;
  - v. Submittal by the Proposer of more than one Sealed Proposal in response to this RFP under the Proposer's own name or under a different name;
  - vi. Evidence of collusion in the preparation of a proposal or bid for any Administration Design or Construction contract by (a) the Proposer and (b) other proposers or bidders for that contract; and/or
  - vii. Uncompleted work or default on a contract in another jurisdiction for which the Proposer is responsible.

Administration Disclaimers:

The RFP does not commit the Administration to enter into a contract, nor does it obligate the Administration to pay for any costs incurred in preparation and

submission of the Sealed Proposals or in anticipation of a contract. By submitting a Sealed Proposal, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a contract is contingent upon sufficient appropriations and authorizations being made by the General Assembly of Maryland, or the Congress of the United States if federal funds are involved, for performance of a contract between the successful Proposer and the Administration.

In no event shall the Administration be bound by, or liable for, any obligations with respect to the Work or the project until such time (if at all) as the contract, in form and substance satisfactory to the Administration, has been executed and authorized by the Administration and approved by all required authorities and, then, only to the extent set forth in a written Notice to Proceed. In submitting Sealed Proposals in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

## **XVII. Disadvantage Business Enterprise (DBE) Program and Equal Employment Opportunity**

### **A. Policy**

The Administration shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT) assisted contract or in the administration of 49 CFR Part 26. The Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this PROJECT.

### **B. DBE Participation Goal:**

By submitting Sealed Proposals in response to this RFP, an Offeror agrees that it shall comply with the Disadvantaged Business Enterprise (DBE ) provisions of the contract. These provisions are consistent with the applicable portions of the Minority Business Enterprise (MBE) provisions of the State Finance and Procurement Article of the Maryland Code. In this RFP, the terms DBE and MBE have the same meaning.

Each Proposer will be required to make a good faith effort to achieve the established DBE participation goal and provide evidence of such efforts in the Proposal. Such efforts must continue throughout the evaluation of Proposals, contract award, and contract performance.

Only MDOT certified DBEs can be utilized to achieve the contract's DBE goal.

The overall DBE participation goal will be 0% of the total contract price for the Preconstruction Services. Due to the nature of the Contractor's role in the Preconstruction Design phase, the Administration has determined that there are insufficient subcontracting opportunities to justify a DBE goal on the Preconstruction Design phase. A contract goal will be set for all Construction phases. Sufficient good faith efforts to meet the goal shall be a condition of award of each Construction phase contract. Additionally, because of the MDOT certification requirement for DBE's, firms are encouraged to submit paperwork for certification as soon as possible.

C. Small Business Enterprise

There will be no small business enterprise goals for this project.

**XVIII. Public Information Act Notice**

Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

**XIX. Arrearages**

By submitting a response to this solicitation, a Proposer shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

**XX. Contract Time**

The contract time for Preconstruction Services is expected to last up to 18 months from Notice to Proceed. This includes the potential for overlapping Preconstruction and Construction phases, in the event the Contractor is awarded Construction phase services. Upon execution of the contract amendment for a Construction phase, the completion date of the overall contract will be amended to account for the Construction phase.

For the purposes of the Preconstruction phase, the initial completion date of the contract will be **May 1, 2023 (calendar date)**.

Any delay in awarding or the execution of the contract will not be considered a basis for a monetary claim, however, an extension of time may be considered by the Administration, if warranted.

**XXI. Progress Payments**

For payment of preconstruction services awarded under this contract, the Contractor will submit monthly invoices for payment. Invoices shall contain the following information:

Date -

Invoice Number - (created by the Contractor)

Bill To: MDOT State Highway Administration  
707 N. Calvert Street

Baltimore MD 21202

Federal Tax I.D. Number

Remittance Address

FMIS Number PG618A24

Contract Description – MD 4 (Pennsylvania Ave) at Suitland Parkway  
Interchange Improvements

Construction Contract- PG6185470

Payment Amount –

Description of Work provided in invoice period:

The CMAR Preconstruction fee will be prorated and paid in equal amounts over the duration of the contract portion of the Preconstruction phase. Upon successful execution of the final contract amendment for Construction services or termination of the contract, any remaining balance for the Preconstruction phase may be invoiced.

**XXII. Proposed Project Schedule**

Issue RFP	May 24, 2021
Final Date for Receipt of Proposer's Questions	June 14, 2021
Letter of Interest Due	June 21, 2021
Sealed Proposal Submittal to MDOT SHA	June 28, 2021
Selection of Successful Proposer	August 2021
Notice to Proceed for Preconstruction	September 2021
Target for GMP Submittal by	November 2022
Anticipated Notice to Proceed for Construction	May 2023

## **Appendix – Contract Provisions**

## **NOTICE TO CONTRACTORS**

### **CARGO PREFERENCE ACT (CPA)**

All Contractors and Sub-Contractors are to be in compliance with the requirements of 46 CFR Part 381 and incorporate by reference the recommended clauses in 46 CFR 381.7(a)-(b) - ("Contractor and Subcontractor Clauses. "Use of United States-flag vessels")

(a) Agreement Clauses. "Use of United States-flag vessels:

"(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

"(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) Contractor and Subcontractor Clauses. "Use of United States-flag vessels: The contractor agrees-

"(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

"(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

"(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract".

Guidance documents for this requirement, including the 12/11/2015 policy memo, the 12/8/2015 legal opinion and a page of Q&A's are available on the CPA construction Program Guidance page:

<https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>



This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

**CONTRACT PROVISIONS**  
**CONTRACTOR REGISTRATION REQUIREMENTS**

CONTRACT NO. PG6185470  
1 of 1

**CONTRACTOR REGISTRATION REQUIREMENTS**

Register in the System for Award Management (SAM) online at <https://www.sam.gov> prior to the time an offer is submitted for all Federal-Aid funded Contracts. The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is no fee to register for this site. User guides and webinars are available under the Help tab. Allow up to 12 to 15 business days after you submit before your registration is active in SAM.

**CONTRACT PROVISIONS**

CONTRACT NO. PG6185470

MARYLAND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MDMUTCD)  
REQUIREMENTS

1 of 1

**NOTICE TO ALL HOLDERS OF THIS CONTRACT DOCUMENT**

**MARYLAND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES  
(MDMUTCD) REQUIREMENTS**

The 2011 Maryland Manual on Uniform Traffic Control Devices (MdmUTCD) is the legal State standard for traffic control devices. All traffic control devices (temporary or permanent) utilized on Administration projects shall be in conformance with the requirements provided in the 2011 Edition of the Administration's MdmUTCD for Streets and Highways.

**NOTICE TO ALL HOLDERS OF THIS CONTRACT DOCUMENT**

**NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM (NCHRP)  
REPORT 350 AND THE MANUAL FOR ASSESSING SAFETY HARDWARE (MASH)  
COMPLIANCE FOR DEVICES USED IN THE MAINTENANCE OF TRAFFIC AND  
TRAFFIC CONTROL**

Except as otherwise specified in this section, all temporary and permanent highway safety features, including longitudinal barriers, transitions, end terminals, crash cushions, breakaway/yielding supports, truck-mounted attenuators, and work zone traffic control devices, shall meet values recommended when applicable tests are performed for evaluation criteria for the respective evaluation factors, as defined in NCHRP Report 350, or the MASH 2016, as noted herein. When conformance with NCHRP Report 350 or MASH 2016 is required, provide the Engineer with the manufacturers' certifications that the devices comply with the specified criteria. All temporary and permanent highway safety features shall comply with MASH 2016 criteria by the relevant dates noted below.

**TEMPORARY INSTALLATIONS FOR MAINTENANCE OF TRAFFIC**

The implementation dates below apply to temporary work zone roadside safety hardware and devices.

Temporary work zone devices, including Category 1, 2, 3 and 4 devices manufactured after 12/31/2019, when applicable, must be successfully tested to the 2016 edition of MASH. Relevant devices manufactured on or before 12/31/2019, and successfully tested to NCHRP 350, the 2009 edition of MASH, or otherwise authorized, may continue to be used.

Unless specifically waived in the Contract Documents, only devices approved on Qualified Product List by the Administration may be used.

**Category 1 Devices**

These devices include cones, tubular markers, flexible delineator posts, and drums, none of which have any accessories or attachments, and are used for channelization and/or delineation.

**Category 2 Devices**

These devices include Type I, II, and III barricades, portable sign supports with signs, intrusion alarms, and vertical panels. Category 1 devices, such as drums or cones, that are modified with accessories or attachments shall be considered Category 2 devices.

**Category 3 Devices**

- (a) Truck Mounted Attenuators (TMAs) and Trailer Truck Mounted Attenuators (TTMAs).
- (b) Temporary Barrier.
  - (1) Concrete Barrier.
  - (2) Traffic Barrier W-Beam and Water Filled Barrier.

**CONTRACT PROVISIONS**  
(NCHRP) REPORT 350 AND MASH COMPLIANCE

CONTRACT NO. PG6185470  
2 of 2

(3) Steel/Aluminum Barrier.

(c) Temporary End Treatments.

**Category 4 Devices**

These devices include area lighting supports, arrow panels, and portable variable message signs that may be portable or trailer-mounted.

Use of Category 4 devices shall comply with the provisions of Part 6 of the MD MUTCD.

**PERMANENT ROADSIDE HARDWARE INSTALLATION**

The implementation dates below apply to both new and replacement installations of roadside safety hardware on National Highway System (NHS) roadways except when a waiver is approved by FHWA

**December 31, 2017:** Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of W-beam barriers and cast-in-place concrete barriers as specified in Contract Documents.

**June 30, 2018:** Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of W-beam tangent terminals as specified in Contract Documents.

**December 31, 2018:** Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of crash cushions.

**December 31, 2019:** Contracts with bid openings after this date shall meet testing criteria as defined in MASH 2016 guidelines for all new permanent installations and full replacements of bridge rail, transitions, all other longitudinal barrier (including portable barriers installed permanently), other W-beam terminals (such as double-sided or median terminals, flared terminals, and terminals installed on a flare), sign supports, cable barrier, cable barrier terminals, all other terminals, and all other breakaway hardware as specified in Contract Documents.

**OCCUPYING WETLANDS**

The Contractor is hereby alerted to the importance of preserving wetland areas. The Administration, in conjunction with the various environmental agencies, has developed these Contract Documents so as to minimize or eliminate disturbance and damage to existing wetland areas. In order to accomplish this, the following must be rigidly adhered to:

- (a) Prior to performing any work on the project, the areas of wetland will be identified and marked as directed by the Administration. All personnel of the Contractor or sub-contractors shall be alerted to these designated areas.
- (b) The Contractor or sub-contractors shall not impact any wetland or waterway, whether it be permanently or temporarily unless otherwise stipulated in the permit application and approved as an authorized action by the appropriate regulatory agency. No fill shall be placed in these areas without a permit.
- (c) If a Contractor or sub-contractor has to impact a wetland or waterway that is not covered by an existing wetland permit, they shall immediately notify the Engineer. The Engineer will notify the Environmental Programs Division to determine the extent of any permit modification. At that time the Environmental Programs Division will request a permit modification or submit a permit application.
- (d) If the Contractor impacts any wetland or waterway for which they do not have a wetland permit, they shall be responsible for restoring the wetland areas and possibly mitigating the wetland impacts to the full satisfaction of the environmental agencies, which could include monetary compensation.
- (e) The cost of restoration and mitigation of the impacted areas shall be at no additional cost to the Administration.

The importance of not abusing the wetland areas cannot be overemphasized. Abuse of wetland areas could jeopardize the operation of the total Contract and could be cause for a shut-down. If a shut-down occurs because of the Contractor's failure to secure the required permits (i.e. the Contractor's method of work includes impacts not approved by previously acquired permits), the Contractor's negligence or operations, all costs and damages to the Contractor and to the State will be at no additional cost to the Administration. Noncompliance with these requirements will not be considered for an extension of Contract time.

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions

prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be



aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there

under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment

data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which

cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs

anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice

classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The

ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require

or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

**VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it

determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid

Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when

submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**



a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a

First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**



This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

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**AFFIRMATIVE ACTION REQUIREMENTS  
UTILIZATION OF DISADVANTAGE BUSINESS ENTERPRISES  
FOR FEDERAL-AID CONTRACTS**

**CONTRACT GOALS**

FOR THE PURPOSE OF THIS CONTRACT, A GOAL OF **Zero** PERCENT HAS BEEN ESTABLISHED FOR SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESSES THAT ARE OWNED AND CONTROLLED BY THOSE INDIVIDUALS WHO ARE BLACK AMERICANS, HISPANIC AMERICANS, ASIAN-PACIFIC AMERICANS, SUBCONTINENT ASIAN AMERICANS, NATIVE AMERICANS, OR WOMEN PURSUANT TO THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT) MINORITY BUSINESS ENTERPRISE PROGRAM:

It is the policy of the Maryland Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) shall have an equal opportunity to participate in the performance of the contracts financed in whole or in part with Federal funds under these agreements. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26 and SAFETEA-LU apply to this agreement.

The bidder agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 and SAFETEA-LU have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all bidders shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 and SAFETEA-LU to ensure that Disadvantaged Business Enterprises have an equal opportunity to compete for and perform on Federally funded contracts.

The Maryland State Highway Administration, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any Contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**A. GENERAL**

For the purpose of these requirements, the following terms as defined below shall apply:

**Administration Representative** – A DBE Officer or employee of an Administration who enforces the laws and regulations pertaining to disadvantaged and minority business enterprise and contract compliance.

**Affirmative Actions** – Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged and minority business enterprises fully in contracts and programs.

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**Business Enterprises** – Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

**Certified Business** – A business which, by order of the Chair/MBE Advisory Council or his/her designee, has been certified as a bona fide DBE. MDOT certification does not equate to a pre-qualification status.

**DBE – Disadvantaged Business Enterprise** – (Reference 49 CFR Part 26, Subpart A) A small business concern: (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Where stock ownership is involved, the disadvantaged owner(s) shall own at least 51 percent of each class of voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership.

**DBE Directory** – A compilation of businesses certified by MDOT as disadvantaged, minority, or socially and economically disadvantaged businesses. The directory will be published annually with quarterly supplements. It will also be provided in automated format and on the Internet to be updated as changes are made.

**DBE Participation Packet** – The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The DBE Participation Packet consists of the Certified DBE Utilization and Fair Solicitation Affidavit and the DBE Participation Schedule, both of which must be submitted with your bid or initial price proposal. The DBE Participation Packet also includes the following documents, which shall be submitted after bids or proposals are opened: Outreach Efforts Compliance Statement, DBE Subcontractor Project Participation Affidavit, MDOT Joint Venture Disclosure Affidavit, and Minority Contractor Unavailability Certificate. See all bid proposal documents at <http://www.mdot.maryland.gov/newMDOT/Procurement/index.html>. On the left of the web page, under Federally Funded DBE Bid/Proposal Forms as listed below:

**Form A** MDOT-OP 016-2/ MDOT DBE FEDERALLY FUNDED CONTRACTS  
CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

**Form B** MDOT-OP 017-1/ MDOT DBE FEDERALLY FUNDED CONTRACTS  
DBE PARTICIPATION SCHEDULE PART 1- INSTRUCTIONS FOR DBE  
PARTICIPATION SCHEDULE

**Form C** MDOT-OP 018-1/ MDOT DBE FEDERALLY FUNDED CONTRACTS  
OUTREACH EFFORTS COMPLIANCE STATEMENT

**Form D** MDOT -OP 019-2/ MDOT DBE FEDERALLY FUNDED CONTRACTS  
DBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT

**Form E** MDOT MBE/DBE GOOD FAITH EFFORTS GUIDANCE AND  
DOCUMENTATION; PART 1- GUIDANCE FOR DEMONSTRATING GOOD FAITH  
EFFORTS TO MEET MBE/DBE PARTICIPATION GOALS

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**Form E MDOT MBE/DBE GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION; PART 2- CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION**

**DBE Program** – A program developed by MDOT to implement the requirements of Title 14, Subtitle 3, of the State Finance and Procurement Article, Annotated Code of Maryland; Title 10, Subtitle 3, of the State Finance and Procurement Article, Annotated Code of Maryland, for Leases of State-Owned Property; and 49 CFR Part 26, Subparts A and C for all Federal Department of Transportation Financial Assistance Programs.

**Director, Office of Equal Opportunity** – The individual designated for the Administration’s overall DBE compliance.

**Joint Venture** – An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Small Business Administration (SBA) 8(a) Certification** – The SBA 8(a) Certification Program is a Federal Program which establishes firms as disadvantaged and eligible for participation in the Federal SBA Program.

**Socially and Economically Disadvantaged Individual Pursuant to 49 CFR Part 26** – Those individuals who are citizens of the United States (or lawfully admitted permanent residents). For convenience, these individuals and groups are referred to as “minorities” in this document and who are:

1. Found by the MDOT to be socially and economically disadvantaged on a case-by-case basis;
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged;
  - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
  - b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - c. “Native Americans,” which includes persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;
  - d. “Asian-Pacific Americans,” which included persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

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- e. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - f. Women;
3. Only those persons whose personal net worth does not exceed \$750,000 may be found to be economically disadvantaged.

**B. DBE and Good Faith Effort Requirements**

1. This contract includes a DBE participation goal for subcontracting and/or procurement of materials and/or services. Bidders (or offerors) must make a good faith effort to meet the DBE participation goal **before bids or proposals are due**, including outreach efforts. A bid or initial proposal must include both a completed and executed Certified DBE Utilization and Fair Solicitation Affidavit and DBE Participation Schedule. The failure of a bidder to complete and submit these documents shall result in a determination that the bid is not responsive. The failure of an offeror to complete and submit these documents shall result in a determination that the proposal is not susceptible of being selected for award.
2. In making a good faith effort to achieve the DBE goal, prior to completing the Certified DBE Utilization and Fair Solicitation Affidavit and the DBE Participation Schedule and prior to submitting a bid or initial proposal the bidders (or offerors) including those bidders or offerors that are certified DBEs must:
  - a. Identify specific work categories within the scope of the procurement appropriate for subcontracting and/or procurement of materials and/or services;
  - b. **Solicit DBEs in writing at least 10 days before bids or initial proposals are due**, describing the identified work categories and providing instructions on how to bid on the subcontracts and/or procurement of materials and/or services;
  - c. Attempt to make personal contact with the DBEs solicited and to document these attempts;
  - d. Assist DBEs to fulfill, or to seek waiver of, bonding requirements; and
  - e. Attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to DBEs.
3. All firms bidding on a Federal-Aid Contract shall submit the name and address of all subcontractors, service providers, and suppliers that submitted quotes on the Contract. All subcontractors, service providers, and suppliers shall complete and submit to the Administration the form titled Contractor Information.
4. The bidder shall seek commitments from disadvantaged business enterprises by subcontracting and/or procurement of materials and/or services, the combined value of which equals or exceeds the appropriate percent (goal) of the total value of the prime contract. A bidder may count toward its DBE goals expenditures for materials and supplies obtained from DBE regular dealers and/or manufacturers provided that the DBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). The bidder

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may count 60 percent of its expenditures to a DBE regular dealer that is not a manufacturer, provided that the DBE supplier performs a commercially useful function in the supply process. The apparent low bidder shall submit to the Administration, within 10 business days after notification that it is the apparent low bidder, an acceptable Affirmative Action Plan for the utilization of Disadvantaged Business Enterprises in this Contract. The Contract will not be awarded without the Bidder's AAP being approved by the Administration.

The Affirmative Action Plan shall include as a minimum:

- a. The name of an employee designated as the bidder's liaison officer for minority affairs.
  - b. A complete DBE Subcontractor Project Participation Affidavit , using contractors whose names appear in the DBE directory or who are otherwise certified by MDOT as being a disadvantaged business enterprise. Except as permitted by law and approved by the Administration, this affidavit shall include all DBE firms identified on the DBE Participation Schedule with a percentage of participation that meets or exceeds the percentage of participation indicated in the bid or initial proposal.
  - c. A completed Outreach Efforts Compliance Statement .
5. When a bidder intends to attain the appropriate goal for disadvantaged business enterprise participation by use of a joint venture, the bidder shall submit a Joint Venture Disclosure Affidavit showing the extent of disadvantaged business participation. If a bidder intends to use a joint venture as a subcontractor to meet its goal, the affidavit shall be submitted through the bidder by the proposed subcontractor and be signed by all parties. A DBE, even in a joint venture arrangement shall be certified as a DBE by MDOT prior to being included in the Affirmative Action Plan.
6. Where the proposed DBE participation does not meet the DBE contract goals, sufficient evidence to demonstrate that the bidder has taken all necessary and reasonable steps to make a good faith effort to meet these goals shall be required.

**7. Determination of Bid Responsiveness for Federal-Aid Contracts**

If the bidder is unable to secure from DBEs by subcontracting and/or by procurement of materials and/or services, commitments which at least equal the appropriate percent (goal) of the values of the prime Contract at the time of bid, he shall request, in writing, a waiver of the unmet portion of the goal. This request must be initiated by checking the appropriate box on the Certified DBE Utilization and Fair Solicitation Affidavit submitted with the bid or initial proposal.

The waiver may be granted by the Administrator. To obtain approval of a waiver, the bidder shall submit the following information:

- a. A detailed statement of efforts made prior to bid to contact and negotiate with DBEs including: (i) the dates, names, addresses, and telephone numbers of DBEs who were contacted; (ii) a description of the information provided to DBEs requesting the plans, specifications, and anticipated time schedule for portions of the work to be performed and (iii) a detailed statement of the reasons why additional prospective agreements with DBEs were not reached;

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- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goals;
  - c. For each DBE that the Contractor considers not qualified, but from which a bid has been received, a detailed statement of the reasons for the bidder's conclusion; and
  - d. For each DBE contacted but unavailable, (i) a Minority Contractor Unavailability Certificate signed by the disadvantaged business enterprise, or (ii) a statement from the bidder shall be submitted that states that the DBE refused to sign the Certificate.
- 8. Guidance concerning good faith efforts.** The following is a list of the types of actions and factors that will be used to determine the bidder's or offeror's good faith efforts to obtain DBE participation. It 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. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder or offeror might otherwise prefer to perform these work items with its own forces.
  - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - d. (1) Negotiating in good faith with interested DBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders and offerors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor'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 bids in the contractor's efforts to meet the project goal.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- i. In determining whether a bidder or offeror has made good faith efforts, the Administration may take into account the performance of other bidders or offerors in meeting the contract goal. For example, when the apparent successful bidder or offeror fails to meet the contract goal, but others meet it, the Administration may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder or offeror could have met the goal. If the apparent successful bidder or offeror fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders or offerors, the Administration may view this, in conjunction with other factors, as evidence of the apparent successful bidder or offeror having made good faith efforts.

**9. Bidder Use of DBE Special Services**

The bidder shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan fund accounts, time and demand deposit accounts, payroll services, and if needed, organization investment counseling.

**10. Bidder Records**

The bidder shall maintain records showing actions which have been taken to comply with procedures set forth herein.

**11. Bidder Cooperation**

The bidder shall cooperate with the Administration Representative in any reviews of the Contractor's procedures and practices, with respect to DBEs, which the Administration Representative may, from time to time, conduct.



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**12. Bidder DBE Modifications**

During the life of the Contract, all plans to modify the approved DBE participation program will require the approval of the Administrator or his authorized representative. This shall include any changes to the items of work to be sublet or materials and services to be obtained which differ for those in the original DBE participation program. Any such request for revisions shall be directed to the appropriate District Engineer for their disposition.

**C. RECORDS AND REPORTS**

1. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprise utilization obligations. The records kept by the Contractor shall be designed to indicate:
  - a. The name of disadvantaged and non-disadvantaged subcontractors and suppliers, the type of work materials or services being performed on or incorporated in this project, and the monetary value of such work materials or services.
  - b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of disadvantaged business enterprises on this project.
  - c. The progress and efforts made in seeking out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project.
2. Information required to be submitted for Federally Assisted contracts in accordance with 49 CFR Part 26:
  - a. All bidders (not only the apparent successful bidder) shall provide the following information:
    - (1) The age of the bidding firm; and
    - (2) The annual gross receipts of the bidding firm.
  - b. All bidders (not only the apparent successful bidder) shall provide the following information for each firm quoting or considered as subcontractors:
    - (1) The name of firm; and
    - (2) The address of firm.
  - c. The Administration will contact each of the firms quoting or considered as subcontractors to obtain:
    - (1) The age of the firm; and
    - (2) The annual gross receipts of the firm.

If this information already has been gathered by the Administration on a firm and it is current, it will not be requested.

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3. The Contractor shall submit reports on a monthly basis of those contracts and other business transactions executed with disadvantaged business enterprises with respect to the records referred to in Subparagraph 1.a above, in such form, manner, and content as prescribed by the Administration. The reports shall be due monthly on the 15<sup>th</sup> calendar day of each month. If the Contractor cannot submit their report on time, they shall notify the Administration's Representative and request additional time to submit the report. Failure of the Contractor to report in a timely manner may result in a finding of noncompliance. Additional reports may be required by the Administration upon written request.
4. To ensure compliance with the certified DBE contract participation goals, the Contractor shall:
  - a. Submit monthly, a report listing unpaid invoices over 30 days from all certified DBE subcontractors and the reason payment has not been made;
  - b. Include in its agreement with certified DBE subcontractors a requirement that DBE subcontractors are to submit monthly to the Administration a report identifying the prime Contractor and listing the following:
    - (1) Payment received from the Contractor in the preceding 30 days; and
    - (2) Invoices for which the subcontractor has not been paid.
5. All such records shall be retained for a period of three years following acceptance of final payment and shall be available for inspection by the U.S. Department of Transportation, MDOT, and the Administration.

**D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT**

1. Whenever the Administration believes the prime Contractor or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration Representative will conduct an investigation. If the Administration representative finds the prime Contractor or any subcontractor is not in compliance with these provisions, the representative will make a report of noncompliance and notify such Contractor in writing of the steps that will, in the judgment of the Administration, bring the Contractor into compliance. If the Contractor fails or refuses to comply fully with such steps, the Administration's representative will make a final report of noncompliance to the Administrator, who may direct the imposition of one or more of the sanctions listed below:
  - a. Suspension of work on a project, pending correction;
  - b. Withholding payment or a percentage thereof, pending correction;
  - c. Referral of DBE to the MDOT Office of MBE for review for decertification or minority business fraud investigation;
  - d. Referral to MDOT Office of MBE for review/referral to the Attorney General's Office for review for initiation of debarment;
  - e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel; or

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- f.** Any other action as appropriate.

The Administrator will determine which sanction(s) should be imposed in order to promote the purpose of the MDOT DBE Program.

- 2.** If the documents used to determine the status of a DBE contain false, misleading, or misrepresenting information, the matter may be referred to the MDOT Office of MBE for appropriate action.
- 3.** Loss of DBE Certification
  - a.** When a prime Contractor has made a commitment to use a DBE who has lost its certification but the subcontract has not been executed prior to the notice of loss of certification, the prime Contractor is required to obtain an eligible, certified DBE for the Contract or demonstrate to MDOT that it has made a good faith effort to do so.
  - b.** When a prime Contractor has executed a contract with a DBE subcontractor before the notice of loss of certification, the prime Contractor may continue to use the firm on the Contract and may continue to receive credit towards its DBE goal, i.e., contract goal, for the work of that subcontractor.
  - c.** The work carried out by a DBE Prime Contractor would be counted by MDOT up to the loss of certification. The work performed after the loss of certification would not be considered DBE participation.
  - d.** When a DBE subcontractor has lost its certification, MDOT may not continue to count the DBE participation which takes place after the loss of certification as DBE work when counting participation towards the overall goal of the modal administration or the Department.
  - e.** If a DBE's loss of certification is the result of exceeding the size standards while performing on a contract, the DBE participation may be counted for both the Contract goal and the overall goal.
- 4.** Each Contract that the Administrator signs with a Prime contractor (and each subcontract the Prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - a.** Withholding monthly progress payments;
  - b.** Assessing sanctions;
  - c.** Liquidated damages; and/or
  - d.** Disqualifying the contractor from future bidding as non-responsible.

**E. SUBCONTRACTING.**

**Subcontracting by the Prime Contractor.** Form B Request for Approval of Subcontractor shall be used by the Prime Contractor to request approval of a Subcontractor and also to ensure that a formal Subcontract has been or will be written and kept on file by the Prime Contractor. Completion and submittal of the form by the Prime Contractor acknowledges that the Administration's Contracting Officer may require the submission of the written Subcontract for review by the Administration and/or FHWA.

**Lower Tier Subcontracting by an Approved Subcontractor.** Form B Subcontractor's Request for Approval of Lower Tier Subcontractor shall be used by an Approved Subcontractor to request approval of a Lower Tier Subcontractor and also to ensure that a formal Subcontract has been or will be written and kept on file by the Subcontractor. Completion and submittal of the form by the Subcontractor acknowledges that the Administration's Contracting Officer may require the submission of the written Subcontract for review by the Administration and/or FHWA.

**Form Acquisitions.** Maryland State Highway Administration Form B may be acquired through the Administration's Contracts Award Team or District Office. All questions should be directed to the Office of Construction, Contracts Award Team.

It is the Administration's intention to randomly select during each calendar quarter a representative sample of written Subcontracts for review. This review will be conducted by the Office of Construction's Contracts Award Team.

**CONTRACT PROVISIONS**  
**NOTICE TO CONTRACTORS MBE/DBE GOAL**

**CONTRACT NO. PG6185470**  
**1 of 1**

**NOTICE TO CONTRACTORS**

**CONCERNING THE MBE/DBE GOAL ON THIS CONTRACT**

The Maryland Department of Transportation is committed to providing the maximum amount of contracting opportunities to certified Minority Business Enterprises (MBEs) and Disadvantaged Business Enterprises (DBEs). The previously established policy excluded consideration of the cost of supplying structural steel for MBE/DBE participation since there were no structural steel manufacturers certified by MDOT. This exemption is no longer applicable since MBE/ DBE firms have been certified under this category.

The Administration reserves the right to verify the accuracy of the dollar value included on the Contractor's Affirmative Action Plan, including the value associated with the manufacture, supply, and installation of structural steel.

**CONTRACT PROVISIONS**  
**MBE/DBE COMPLIANCE FIELD MEETING**

CONTRACT NO. PG6185470  
1 of 1

**MBE/DBE COMPLIANCE FIELD MEETING**

A MBE/DBE compliance Field Meeting will be conducted to review the responsibilities of the Administration and the Contractor's personnel relative to MBE/DBE Compliance and documentation. The meeting will be held within two weeks after starting work on the project.

The Construction Project Engineer, who will notify the following of the date, time and location, will arrange the meeting. At least one week advanced notice will be required.

**(a) Administrative Representatives.**

- (1) Director, Office of Equal Opportunity or Designee
- (2) District Equal Opportunity Officer
- (3) Regional Constructional Engineer
- (4) Construction Project Engineer
- (5) Construction Inspection Division Inspector

**(b) Contract Representatives.**

- (1) Superintendent - Prime Contractor
- (2) Equal Opportunity Officer - Prime Contractor
- (3) Owner/Superintendent/Foreman MBE/ DBE - Subcontractor

The Construction Project Engineer and Equal Opportunity Representative will jointly conduct the meeting. The Contractor shall notify the appropriate subcontractors and ensure their attendance.

**CONTRACT PROVISIONS**  
**TRAFFIC CONTROL PLAN CERTIFICATION**

CONTRACT NO. PG6185470  
FAP NO. N/A  
1 of 1

**TRAFFIC CONTROL PLAN CERTIFICATION**

PRIOR TO THE COMMENCEMENT OF WORK ON THIS PROJECT, THE SUCCESSFUL BIDDER WILL BE REQUIRED TO COMPLETE A TRAFFIC CONTROL PLAN CERTIFICATION CONTAINING THE INFORMATION SHOWN BELOW. THE CERTIFICATION FORM WILL BE PROVIDED TO THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT.

The Administration's Traffic Control Plan (TCP) has been reviewed and the following course of action shall be followed:

**Option 1** \_\_\_\_\_

The TCP is accepted and shall be used on this project.

**Option 2** \_\_\_\_\_

The TCP is accepted; however, revisions and/or additions shall be submitted for approval in conformance with the Administration's Specifications 104.01 and TC-2.10. It is understood that no additional sum of money is payable to the Contractor if the Administration accepts Option 2.

**Option 3** \_\_\_\_\_

The TCP is not accepted and revision shall be submitted for approval in accordance with the Administration's Specifications 104.01 and TC-2.10. It is understood that no additional sum of money is payable to the Contractor if the Administration accepts Option 3.

It is understood that the effective implementation of the approved TCP is the responsibility of the Contractor. Minor modifications may be made by the Traffic Manager if field conditions warrant and prior concurrence is obtained from the Engineer. Significant changes to the TCP shall be submitted to the Engineer in writing, for approval, in conformance with the Administration's Specifications 104.01.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(PRINT SIGNATURE)

\_\_\_\_\_  
(TITLE)

**CONTRACT PROVISIONS**  
**PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR**

CONTRACT NO. PG6185470  
1 of 4

**PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR**

**PAYROLLS.**

**Non-Federally Funded Contracts.** The Division of Labor and Industry, Prevailing Wage Unit is requiring that all certified payroll records be submitted electronically. For instructions on how to register and submit go online to [www.dllr.state.md.us/prevwage](http://www.dllr.state.md.us/prevwage) and follow the instructions for registering. The regulation addressing this change can be found at COMAR 21.11.11.02. For Non-Federally funded projects, which include prevailing wage rates, the prime Contractor and each subcontractor, shall submit the certified payroll electronically and provide one hard copy to the Project Engineer. All wages shall be paid in conformance with the State Finance and Procurement Article, Section 17-201-17-226 of the Annotated Code of Maryland and the Fair Labor Standards Amendments of 1974 (P.L. 93259). If the award amount of a Non-Federally funded job is less than \$500,000, the project will be exempt from prevailing wage requirements.

A review has been made of the wage conditions in the locality and, based on the information available, the wage rates and fringe payments listed are determined by the Commissioner of the Department of Labor and Industry to be prevailing for the Contract for the described classes of labor in conformance with the law. It shall be the responsibility of the Contractor to fully comply with the law and to contact the Office of the Commissioner of Labor and Industry for interpretation of the provisions of the law.

**Federally Funded Contracts.** For Federally funded projects, the prime Contractor and each subcontractor shall submit one copy of the certified payroll to the Project Engineer.

**General Requirements for Federally and Non-Federally Funded Contracts.** All payrolls are subject to the following requirements:

- (a) All payrolls shall be numbered, beginning at No. 1, and consecutively numbered through the end of the Contract.
- (b) Contract and FAP numbers shall be shown on all payrolls (as applicable).
- (c) All payroll submissions shall include:
  - (1) Federally Funded – employees’ full name, classification, and Individual Identifying Number (IIN) e.g. (last four digits of social security number). Refer to FHWA 1273 (IV),(3),(b)1) for further requirements related to weekly payrolls.
  - (2) Non-Federally Funded – employees’ full name, classification, address and social security number.



**CONTRACT PROVISIONS**  
**PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR**

CONTRACT NO. PG6185470  
2 of 4

- (d) All payrolls shall show the employee's basic hourly wage rate, overtime rate (if applicable), and the number of hours worked (tabulated both daily and weekly).
- (e) When fringe benefits are required, indicate separately the amount of employer contributions to fringe benefit funds and/or programs. The fringe benefits shall be individually identified, but may be tabulated on a separate sheet. When required fringe benefits are paid in cash, add the required fringe benefit amount to the basic hourly rate to obtain the total prevailing wage rate for the employee.
- (f) The employee's net pay and the itemized deductions shall be included in all payrolls.
- (g) A Contractor may make deductions that are required by law or required by a collective bargaining agreement (between the Contractor and a bona fide labor organization). Deductions are also permitted if they are identified in a written agreement between the employee and employer that was made at the beginning of employment, provided that the Contractor presents the agreement to the Administration before the employee begins working on the Contract. Each payroll shall also include the U.S. Department of Labor and Hour Public Contracts Division Statement of Compliance Form WH-347 (or its equivalent), signed by an appropriate official of the Contractor/subcontractor. The Contractor's name, address, and telephone number shall also be shown.
- (h) On Non-Federally funded projects, all apprentices shall be registered with the Maryland Apprenticeship and Training Council.
- (i) Contractors employing a classification of worker for which a wage rate was not included on the original wage decision, shall submit to either the Wage and Hour Team (Federally Funded) or Department of Labor and Licensing (DLLR), (Non-Federally Funded), a request for an additional classification and rate prior to the employee's employment at the project.
- (j) Payrolls for Non-Federally Funded projects shall be submitted within 14 calendar days after the end of each payroll period.
- (k) Payrolls for Federally Funded projects shall be submitted within 7 calendar days after the end of each payroll period.
- (l) Contractors and Subcontractors are required to maintain complete social security numbers and home addresses for employees. Government agencies are entitled to request or review all relevant payroll information, including social security numbers and addresses of employees. Contractors and Subcontractors are required to provide such information upon request.

**CONTRACT PROVISIONS**  
**PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR**

CONTRACT NO. PG6185470  
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**OVERTIME.**

**Non-Federally Funded Contracts.** Overtime rates shall be paid by the prime Contractors and subcontractors under their Contracts and agreements with their employees, which in no event shall be less than time and a half the prevailing hourly rate of wages for all hours worked in excess of ten hours in any one calendar day or forty hours in any one calendar week and work performed on Sundays and legal holidays.

Fringe benefits shall be paid for all hours worked, including the overtime hours. However, the fringe benefit amounts may be excluded from the half time premium due as overtime compensation.

**Federally Funded Contracts.** Overtime rates shall be paid as specified in Form FHWA 1273. Fringe benefits shall be paid for all hours worked, including the overtime hours. However, the fringe benefit amounts may be excluded from the half time premium due as overtime compensation.

**PENALTIES.**

**Non-Federally Funded Contracts.** When the Contractor is delinquent in submitting payroll records, processing of partial payment estimates will be held in abeyance, pending receipt of the records. The Contractor shall be liable to the Administration for liquidated damages in the amount of \$10.00 for each calendar day the records are late.

The Contractor shall be liable to the Administration for liquidated damages in the amount of \$20.00 for each day that an employee is paid less than the prevailing wage.

**Federally Funded Contracts.** When the Contractor is delinquent in submitting payroll records, processing of partial payment estimates will be held in abeyance pending receipt of the records.

**ADDITIONAL CLASSIFICATIONS.**

**Federally Funded Contracts.** If the wage determination lacks a necessary classification the Prime Contractor is responsible to submit the request for the additional classification, with a proposed rate, to the State Highway Administration's Wage and Hour Team. The request is to include a copy of the projects wage determination.

**Non-Federally Funded Contracts.** If the wage determination lacks a necessary classification the Prime Contractor is responsible to submit the request for the additional classification, with a proposed rate, to the Department of Labor and Licensing (DLLR).

**CONTRACT PROVISIONS**  
**PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR**

CONTRACT NO. PG6185470  
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**INQUIRIES.**

Request for information or questions shall be addressed to:

Maryland State Highway Administration  
Office of Construction  
Wage and Hour Team  
7450 Traffic Drive, Building #4  
Hanover, MD 21076  
or  
Email: [wageandhourteam@sha.state.md.us](mailto:wageandhourteam@sha.state.md.us)

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

CONTRACT NO. PG6185470  
1 of 8

**NOTICE OF ACTIONS REQUIRED FOR AFFIRMATIVE ACTION TO ENSURE  
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidders attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as noted in Appendix A and B:

These goals are applicable to all the Contractors' construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this notification. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is noted on appendix B.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATIONS (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

CONTRACT NO. PG6185470  
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- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and,
  - (iv) American Indians or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through 7.p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.
- 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

CONTRACT NO. PG6185470  
3 of 8

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with reason therefore, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

CONTRACT NO. PG6185470  
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policy with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g.** Review, at least annually, the company's EEO Policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h.** Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i.** Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j.** Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k.** Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l.** Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m.** Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to insure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n.** Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o.** Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

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- p.** Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through 7.p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through 7.p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
- 9.** A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10.** The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11.** The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12.** The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13.** The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14.** The Contractors shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at



**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

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which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

- 15.** Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents

(a.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- 16.** The Contractor will receive at the time of Award Federal Form CC-257 for his use in reporting monthly the Affirmative Actions for minority and female which he has employed.

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

CONTRACT NO. PG6185470  
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**APPENDIX A**

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the Contractor's aggregate on-site construction work force whether or not part of that work force is performing on a Federal or federally assisted construction contract or subcontract.

AREA COVERED: Nationwide

**GOALS AND TIMETABLES**

Timetable	Goals (percent)
From April 1, 1978 until March 31, 1979.....	3.1
From April 1, 1979 until March 31, 1980.....	5.0
From April 1, 1980 until further notice.....	6.9

**CONTRACT PROVISIONS**  
**NOTICE OF ACTIONS FOR AFFIRMATIVE ACTION**

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**APPENDIX B**

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total on-site construction work force, regardless of whether or not part of that work force is performing work on a Federal, federally assisted or nonfederally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work such contractors are required to comply with the applicable SMSA or EA goal contained in this appendix B-80.

State	Goal (percent)
Maryland:	
019 Baltimore, MD:	
SMSA Counties:	
0720 Baltimore, MD.....	23.0
MD Anne Arundel; MD Baltimore;	
MD Carroll; MD Harford;	
MD Howard; MD Baltimore City	
Non-SMSA Counties.....	23.6
MD Caroline; MD Dorchester;	
MD Kent; MD Queen Annes;	
MD Somerset; MD Talbot;	
MD Wicomico; MD Worcester	
Washington, DC:	
020 Washington, DC:	
SMSA Counties:	
8840 Washington, DC.....	28.0
MD Charles; MD Montgomery;	
MD Prince Georges	
Non-SMSA Counties.....	25.2
MD Calvert; MD Frederick	
MD St. Marys; MD Washington	
Pennsylvania	
Non-SMSA Counties.....	4.8
MD Allegany; MD Garrett	

**CONTRACT PROVISIONS**  
**TRAINING PROVISIONS**

CONTRACT NO. PG6185470  
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**TRAINING PROVISIONS**

As part of the Contract's Equal Employment Opportunity Affirmative Action Program, on-the-job training shall be provided as follows:

The on-the-job training shall be aimed at developing full journeypersons in the type of trade or job classification involved. On this Contract **Zero (0)** persons will be trained.

In the event that a Contractor subcontracts a portion of the Contract work, the Contractor shall determine how many, if any, of the trainees are to be trained by the subcontractor, however, the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Provision. The Contractor shall also ensure that this training Provision is physically included in each subcontract to ensure that the workforce utilized by the subcontractor meet the goals for minority and female employment and training. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees in each classification shall be distributed among the work classifications on the basis of the Contractor's needs, minority and women employment goals specified for each trade in the Contract Provision, and the reasonable area of recruitment.

Prior to beginning construction, the Contractor shall submit to the Administration for approval a Manpower and Training Utilization (MTU) Schedule no later than at the preconstruction meeting.

The MTU schedule shall include:

1. The proposed training programs.
2. The number of trainees to be trained in each classification.
3. Anticipated starting and ending dates for training in each classification.

No Contract work may be undertaken until the Administration has accepted the schedule.

If the submitted training programs fail to meet the requirements as defined within these Provisions, the Administration will withhold one percent of the total category code one pay items from the payment due the Contractor. The Contractor shall submit a revised Manpower and Training Utilization Schedule when major changes in the Contract work schedule occur that substantially affect the previously submitted schedule.

The Contractor shall be credited for each trainee employee who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for the hourly cost of the trainee as specified in the schedule of prices.

**CONTRACT PROVISIONS**  
**TRAINING PROVISIONS**

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Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Provision. The purpose for this objective is to ensure a pool of qualified minorities and women to replace those journeymen who, in the natural course of events will leave the workforce. The program will also provide opportunities to the minorities and women trainees in geographic areas where shortages in minority and women journeymen are prevalent and recognized due to the Contractor's inability to meet the Equal Employment Opportunity goals specified in this Contract.

The training requirements of this Training Provision are not intended nor shall they be used to discriminate against any applicant for training, whether a member of a protected class or not. It is the Contractor's responsibility to demonstrate good faith efforts to ensure an adequate workforce representation of minorities and women in all job classifications on this Contract. Therefore, the Contractor shall consider the employment Contract goals set for minorities and females when enrolling trainees. The Contractor's utilization of the on-the-job training goals will be weighed when an Equal Employment Opportunity workforce compliance determination is made.

The Contractor shall make every effort to enroll minority and women trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minorities and women to the extent that these persons are available within a reasonable area of recruitment).

No employee shall be employed as a trainee in any classification which the individual has successfully completed a training program leading to journeyman status or has been employed as a journeyman. This includes a person gainfully employed as a journeyman by virtue of informal on-the-job training. The Contractor should satisfy this requirement by including appropriate questions in the employee job application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case. In the case of apprentices, evidence of indentureship and registration of the approved apprenticeship program shall be included in the Contractor's records.

The minimum length and type of training and rate for each classification shall be specified in the training program by the Contractor and approved by the Administration and the Federal Highway Administration.

The Administration will approve any program specified in the Administration's On-The-Job Training Manual. The Administration and the Federal Highway Administration will consider other programs if it is reasonably calculated that the programs conform to the Equal Employment Opportunity obligations of the Contract and will qualify the average trainee for journeyman status in the specified classification by the end of the training period. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, and training programs approved by, but not necessarily sponsored by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training will also be acceptable, provided that the program being offered is administered in a manner consistent with the Equal Employment obligation of Federal-aid highway construction Contracts and meets the minimum requirements of this Training Provision.

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**TRAINING PROVISIONS**

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Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Unless otherwise specified, the Contractor will be reimbursed 80 cents per hour of training given an employee on this Contract in conformance with an approved training program. As approved by the Engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the Contractor received additional training program funds from other sources, provided that the other sources do not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above will only be made to the Contractor where the Contractor does one or more of the following and the trainees are concurrently employed on a Federal-aid project:

1. Contributes to the cost of the training.
2. Provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman is caused by the Contractor and evidences a lack of "good faith" on the part of the Contractor in meeting the requirements of this Training Provision. It is normally expected that a trainee will begin training on the project as soon as feasible after the start of work utilizing the skill involved and remain on the project as long as training opportunities exist in the work classification or until the program is completed. It is not required that all trainees be on board for the entire length of the Contract. A Contractor will have fulfilled their responsibilities under this Training Provision when:

1. Systematic and direct recruitment likely to yield qualified minority and women applicants is conducted through:
  - a. Public and private referral sources.
  - b. Advising the existing workforce of training opportunities.
  - c. Unions (if applicable).
2. Acceptable training has been provided to trainees enrolled in the program.
3. The number of specified trainees have completed the minimum hours required in an approved training program.
4. Trainees completing approved programs are retained in the workforce as journeymen.

The Contractor shall pay the trainees at least 60 percent of the appropriate minimum journeyman's hourly rate plus the full fringe benefits specified in the Contract for the first half of the training period, 75 percent for the third quarter of the training period plus full fringe benefits, and 90 percent for the last quarter of the training period plus full fringe benefits. However, in no case shall the total hourly

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rate be less than the U.S. Department of Labor's unskilled laborer wage rate for the project. In addition, all trainees shall be identified as such on the certified payroll.

The Contractor shall furnish the trainee a copy of the approved training program in which the trainee is enrolled. The Contractor shall provide each trainee with a certificate showing the type and length of training satisfactorily completed. The Contractor shall submit a Certificate to the trainee in the following instances:

1. Certificate of Completion when a trainee completes the total number of hours required to complete a training program.
2. Certificate of Training when a trainee does not totally complete the required program hours.

The Contractor shall provide for the maintenance of records and furnish periodic reports inclusive of the Administration's Contractor's Semiannual Training Reports, documenting his performance under this Training Provision. The Semiannual Training Report is to be submitted by the 10th of the month following the reporting period (July 10 and January 10).


If the Contractor fails to fully comply with these Training Provisions, the Administration's Representative will make a final report of non compliance to the Administrator, who may direct the imposition of one or both of the sanctions listed below:

1. Withholding a percentage of the progress payment.
2. Other action appropriate and/or within the discretion of the Administrator.

Maryland Department of Transportation  
State Highway Administration  
**High Visibility Safety Apparel Policy**

This policy replaces all pre-existing high visibility apparel policies.

Recommended by:



\_\_\_\_\_  
Tim Smith, P.E.  
Deputy Administrator  
Chief Engineer for Operations

Approved by:



\_\_\_\_\_  
Gregory A. Slater  
Administrator

Date:

Date:

1. BACKGROUND

- 1.1 Research demonstrates that high visibility safety apparel has a significant impact on the safety of employees who work on highways and rights-of-way.
- 1.2 In addition, high visibility safety apparel may help to prevent injuries and accidents and to make highway workers more visible to the motoring public, which ultimately improves traffic safety.

2. STATEMENT OF POLICY

- 2.1 The High Visibility Safety Apparel Policy provides a standardized apparel program.
- 2.2 The program seeks to improve the visibility of all persons who work on Maryland Department of Transportation State Highway Administration (MDOT SHA) highways and rights-of-way.
- 2.3 All safety apparel shall contain the appropriate label identifying the class.
- 2.4 Compliance with this policy was effective as of January 1, 2019.

3. APPLICABILITY

- 3.1 This policy applies to all MDOT SHA employees and all other persons who work on Maryland state highways and rights-of-way.
- 3.2 This policy exceeds the standards referenced in the Maryland Manual on Uniform Traffic Control Devices (MD MUTCD) 2011 Edition.
- 3.3 All workers shall wear, at a minimum, a single ANSI/ISEA 107/2015 Class 3 safety garment on the upper torso.
- 3.4 All ANSI Class 3 safety garments must be worn fully fastened to meet ANSI/ISEA 107/2015 specifications.
- 3.5 MDOT SHA employee garments shall have a fluorescent yellow-green background material color and be the outermost garment worn.
- 3.6 MDOT SHA employee garment retro-reflective material color shall be silver or white and shall be visible at minimum distance of 1,000 feet. The retro-reflective safety



apparel shall be designed to clearly recognize and differentiate the wearer as a person from the surrounding work environment. The retro-reflective material may be contrasted by fluorescent orange background material not to exceed one-and-one-half inches on either side of the retro-reflective material.

- 3.7 SPECIAL NOTE: A breakaway vest may be considered for certain tasks to prevent entanglement.
- 3.8 Non-MDOT SHA workers' garments shall be approved ANSI/ISEA 107/2015 Class 3 for wear on the upper torso that is either fluorescent orange-red or fluorescent yellow-green background material color and must be the outermost garment worn.
- 3.9 Non-MDOT SHA workers' garments retro-reflective material color shall be orange, yellow, white, silver, yellow-green, or fluorescent version of these colors, and be visible at a minimum distance of 1,000 feet. The retro-reflective safety apparel shall be designed to clearly recognize and differentiate the wearer as a person from the surrounding work environment.
- 3.10 For all MDOT SHA and non-MDOT SHA workers applicable to this Policy, it is recommended that all ANSI Class 3 safety garments under this Policy be cared for according to the manufacturer specifications.

#### 4. REFERENCES

- 4.1 ANSI/ISEA 107/2015 standard — American National Safety Institute/International Safety Equipment Association
- 4.2 MUTCD 2011 -Manual for Uniform Traffic Control Devices - Sections 6D.03 Paragraph 4 and 6E.02
- 4.3 Visibility Research — The VCTR 1989 report concludes that fluorescent colors, when compared with non-fluorescent colors, enhance the daytime conspicuity of worker clothing.

#### 5. DEFINITIONS

- 5.1 Highways — all Maryland roadways owned and maintained by MDOT SHA .
- 5.2 High Visibility Safety Apparel (HVSA) — Personal protective safety clothing intended to ensure roadside workers stand-out to drivers during both daytime and nighttime, and other low-light condition usage. The outermost high-visibility garment worn by MDOT SHA and non-MDOT SHA workers who work on MDOT SHA highways and rights-of-way.
- 5.3 Retro-reflective Material – Material that reflects and returns a relatively high proportion of light in a direction close to the direction from which it came.
- 5.4 Background Material – Colored fluorescent material intended to be highly visible, but when not used in conjunction with retro-reflective material as intended, are not compliant with the requirements of this standard for retro-reflective material.
- 5.5 Breakaway – A garment system that allows workers to quickly remove the vest for additional safety around extreme traffic hazards, moving machinery, or equipment.

## **Appendix – Price Proposal**

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**STATE OF MARYLAND  
DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY ADMINISTRATION  
PROPOSAL FORM**

Proposal by \_\_\_\_\_  
Name

\_\_\_\_\_  
Address (Street and/or P.O. Box)

\_\_\_\_\_  
City State Zip  
( ) ( )

\_\_\_\_\_  
A.C. Phone No. A.C. Fax No.

to furnish and deliver all materials and to do and perform all work, in conformance with the Standard Specifications, revisions thereto, General Provisions and the Special Provisions in this contract **Construction Management at Risk** services located in, Prince George's County Maryland, for which **Technical and Price Proposals** will be received until 12:00 o'clock noon on **28<sup>th</sup>** day of **June 2021** this work being situated as follows:

**MD 4 (Pennsylvania Avenue) at Suitland Parkway Interchange Improvements**

To the State Highway Administration  
BID BOX in Bldg. 4  
7450 Traffic Drive  
Hanover, Maryland 21076

In response to the advertisement by the Administration, inviting bids for the work in conformance with the Contract Documents, now on file in the office of the Administration. I/We hereby certify that I/we am/are the only person, or persons, interested in this bid proposal as principals, and that an examination has been made of the work site, the Specifications, the Plans, and Invitation for Bids, including the Special Provisions contained herein. I/We propose to furnish all necessary machinery, equipment, tools, labor and other means of construction, and to furnish all materials required to complete the project at the following unit price or lump sum price.

SCHEDULE OF PRICES

ITEM NO. CCS NO.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEMS	SECTION	UNIT PRICE		AMOUNTS	
				DOLLARS	CENTS	DOLLARS	CENTS
N/A	LUMP SUM	CMAR PRECONSTRUCTION FEE (THIS ITEM SHALL BE FILLED IN BY THE PROPOSER WITH PRICES IN NUMERALS AND EXTENSIONS MADE BY HER)	XIII.A (RFP)	LUMP SUM			
N/A	PERCENTAGE	CMAR MANAGEMENT FEE PERCENTAGE (THIS ITEM SHALL BE FILLED IN BY THE PROPOSER WITH A PERCENTAGE CARRIED OUT TO TWO DECIMAL PLACES (e.g., 6.51%.))	XIII B (RFP)	PERCENTAGE		_____%	

END OF PRICE PROPOSAL ITEMS

STATE CONTRACT - PG6185470  
 FEDERAL CONTRACT - N/A

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## **GENERAL MATERIAL REQUIREMENTS**

### **CONVICT PRODUCED MATERIALS**

Section 1019 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) clarifies that materials produced by convict labor after July 1, 1991 may not be used for Federal-aid highway construction projects unless produced at a prison facility producing convict made materials for Federal-aid construction projects prior to July 1, 1987.

### **CONTRACT PROVISION BUY AMERICA**

This section only applies to projects partially or totally financed with Federal funds. The Contractor shall comply with Section 165 of the Surface Transportation Assistance Act of 1982 as amended by Section 1041(a) and 1048(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (codified by SAFETEA-LU, §1903 as 23 U.S.C 313) with regard to the furnishing and coating of iron and steel products.

The Contract, if awarded, will be awarded to the responsive and responsible bidder who submits the lowest total bid for the Contract based on furnishing Domestic Products unless such bid exceeds the lowest total bid based on furnishing Foreign Products by more than twenty five percent (25%). Foreign Products will not be permitted to be used as a substitution for Domestic ones after the bid has been awarded.

Furnish steel or iron construction materials, including coating, for permanently incorporated work according to 23 CFR 635.410 and as follows:

- (a) All manufacturing processes of steel or iron materials in a product, including coating; and any subsequent process that alters the steel or iron material's physical form or shape, changes its chemical composition, or the final finish; are to occur within the United States (One of the 50 States, the District of Columbia, Puerto Rico, or in territories and possessions of the U.S.). Manufacturing begins with the initial melting and mixing, and continues through the coating stage. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.
- (b) The following are considered to be steel manufacturing processes:

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- (1) Production of steel by any of the following processes:
  - (a) Open hearth furnace.
  - (b) Basic oxygen.
  - (c) Electric furnace.
  - (d) Direct reduction.
  
- (2) Rolling, heat treating, and any other similar processing.
  
- (3) Fabrication of the products:
  - (a) Spinning wire into cable or strand.
  - (b) Corrugating and rolling into culverts.
  - (c) Shop fabrication.
  
- (c) The manufacturing process for a steel/iron product is considered complete when the product is ready for use as an item (e.g., fencing, posts, girders, pipe, manhole cover, etc.) or could be incorporated as a component of a more complex product through a further manufacturing process (e.g., prestressed concrete girders, reinforced concrete pipe, traffic control devices, bearing pads, etc.). A product containing both steel and/or iron components, may be assembled outside the United States and meet Buy America requirements if the constituent steel and iron components (in excess of the minimal amounts permitted) were manufactured domestically and are not modified at the assembly location prior to final assembly.
  
- (d) If domestically produced steel billets or iron ingots are exported outside of the U.S., as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.
  
- (e) Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.
  
- (f) For the Buy America provisions to apply, the steel or iron product must be permanently incorporated into the project. If an item is rendered as a “donated material” in accordance with 23 U.S.C. 323 – Donations and Credits, it will have to comply with Buy America requirements. While States and local governments may receive a credit for donated material, this material must generally comply with Buy America requirements. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework. Further, Buy America does not apply to materials which remain in place at the contractor convenience.

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- (g) Certifications which document that steel and iron have been manufactured and that coatings for iron or steel have been applied in the United States shall be provided to the Contractor by the manufacturer. The Contractor shall provide the required certifications to the Engineer prior to such items being incorporated into the permanent work. Certifications shall extend to materials utilized in manufactured and fabricated products purchased by the Contractor.
  
- (h) Products manufactured of foreign steel or iron materials may be used, provided the cost of such products as they are delivered to the project does not exceed 0.1% of the total contract amount, or \$2,500, whichever is greater. If a supplier or fabricator wishes to use a partial fabrication process where domestic and foreign source components are assembled at a domestic location, the “as delivered cost” of the foreign components should include any transportation, assembly and testing costs required to install them in the final product.

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**ALTERNATE BID  
USING FOREIGN PRODUCTS**

When a bidder elects to utilize Foreign Products on one or more items, the following summation indicating the Total Bid using Foreign Products must be completed in addition to the individual item bid tabulations.

The following instructions are given to the bidder in completing the Total Bid summation using Foreign Products:

- 1 - The "Bid Total" for the initial bid using Domestic Products shall be shown on line (1).
- 2 - The subtotal for Item Amounts using Domestic Products shall be shown on line (2), for those items which the Contractor elects to use Foreign Products.
- 3 - The subtotal for Item Amounts using Foreign Products shall be shown on line (3).
- 4 - The total Bid, utilizing Foreign Products shall be shown on line (4). The value is obtained by subtracting subtotal (2) from the Total Bid (1) and then adding subtotal (3).

Bid Total for Bid 1 using Domestic items	Line (1) _____
Total of Domestic Items	Line (2) - _____
Total of Foreign Items	Line (3) + _____
Bid Total using Foreign Items	Line (4) _____



ALTERNATE BID - USING FOREIGN PRODUCTS  
 BIDDER'S INSTRUCTIONS

When the bidder elects to submit a bid for one or more items using Foreign Products, the following form must be used. For each item that Foreign Products are contemplated, the appropriate "Item Numbers", "Approximate Quantities", "Description of Items", "Unit Price or Lump Sum Price", "Item Amount Domestic" and "Item Amount Foreign" shall be tabulated below as specified in the initial bid. The bidder shall indicate the unit price in dollars and cents and show the total cost of the item for each item that utilizes Foreign Products. When all items utilizing Foreign Products have been listed, the bidder shall indicate on Page 6 of 45 the subtotals of the Item Amounts for Domestic Products in Line (2) and for Foreign Products in Line (3).

Item Nos.	Approximate Quantities	Description of Items	Unit Price or Lump Sum Dollars.Cts.	Items Amount Domestic Dollars.Cts.	Items Amount Foreign Dollars.Cts.

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**NOTICE**

**All bidders shall complete and submit with their bid the Bid/Proposal Affidavit below.**

**BID/PROPOSAL AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE AND AFFIANT**

**I HEREBY AFFIRM THAT:**

I, \_\_\_\_\_ (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all 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 submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder 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 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.

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**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 defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

**I FURTHER AFFIRM THAT:**

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

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

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- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of the Section 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) through (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 or 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;

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(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

- (a) A court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1) — (14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

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

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

**I FURTHER AFFIRM THAT:**

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

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**G. SUB-CONTRACT 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 or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or 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 or offer 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, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**CONTRACT PROVISIONS**  
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**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. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §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.



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**N. 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 or 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.

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

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

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**COMPREHENSIVE SIGNATURE PAGE 1 OF 2**

THE BIDDER IS HEREBY NOTIFIED THAT THIS DOCUMENT SHALL BE SIGNED IN INK IN ORDER FOR THE BID TO BE ACCEPTED. BY SIGNING, THE BIDDER CERTIFIES THAT HE/SHE WILL COMPLY IN EVERY ASPECT WITH THESE SPECIFICATIONS.

FURTHER, I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT (PARAGRAPHS A-N) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

This bid form shall be filled out legibly in ink or typed. The bid, if submitted by an individual, shall be signed by an individual; if submitted by a partnership, shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation the same shall be signed by the President and attested by the Secretary or an Assistant Secretary. If not signed by the President as aforesaid, there must be attached a copy of that portion of the By-Laws, or a copy of a Board resolution, duly certified by the Secretary, showing the authority of the person so signing on behalf of the corporation. In lieu thereof, the corporation may file such evidence with the Administration, duly certified by the Secretary, together with a list of the names of those officers having authority to execute documents on behalf of the corporation, duly certified by the Secretary, which listing shall remain in full force and effect until such time as the Administration is advised in writing to the contrary. In any case where a bid is signed by an Attorney in Fact the same must be accompanied by a copy of the appointing document, duly certified.

**IF AN INDIVIDUAL:**

NAME: \_\_\_\_\_

\_\_\_\_\_ Street and/or P.O. Box

\_\_\_\_\_ City State Zip Code Fed ID or SSN

\_\_\_\_\_ (SEAL) \_\_\_\_\_  
Signature Date

\_\_\_\_\_ Print Signature

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

\_\_\_\_\_ Print Signature

**CONTRACT PROVISIONS**  
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**COMPREHENSIVE SIGNATURE PAGE 2 OF 2**

**IF A PARTNERSHIP:**

NAME OF PARTNERSHIP: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City State Zip Code Fed ID or SSN

BY: \_\_\_\_\_ (SEAL) \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Signature

TITLE: \_\_\_\_\_ WITNESS: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Signature

**IF A CORPORATION:**

NAME OF CORPORATION: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City State Zip Code Fed ID or SSN

STATE OF INCORPORATION: \_\_\_\_\_

BY: \_\_\_\_\_ (SEAL) \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Signature

TITLE: \_\_\_\_\_ WITNESS: \_\_\_\_\_  
Secretary's Signature

\_\_\_\_\_  
Print Signature

**CONTRACT PROVISIONS**  
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**MDOT DBE FORM A**  
**FEDERALLY-FUNDED CONTRACTS**  
**CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**PAGE 1 OF 2**

**This affidavit must be included with the bid/ proposal. If the bidder/offeror fails to accurately complete and submit this affidavit as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.**

In connection with the bid/proposal submitted in response to Solicitation No. PG6185470, I affirm the following:

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

I have met the overall certified Disadvantaged Business Enterprise (DBE) participation goal of **zero percent (0 %)**. I agree that this percentage of the total dollar amount of the Contract for the DBE goal will be performed by certified DBE firms as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

**OR**

I conclude that I am unable to achieve the DBE participation goal. I hereby request a waiver, in whole or in part, of the goal. Within 10 business days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit a written waiver request and all required documentation in accordance with COMAR 21.11.03.11. For a partial waiver request, I agree that certified DBE firms will be used to accomplish the percentages of the total dollar amount of the Contract as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

**2. Additional DBE 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 business days of receiving such notice: (a) Outreach Efforts Compliance Statement (MDOT DBE Form C - Federally-Funded Contracts ); (b) Subcontractor Project Participation Statement (MDOT DBE Form D - Federally-Funded Contracts); (c) DBE Waiver Request documentation per COMAR 21.11.03.11 (if waiver was requested); and (d) Any other documentation required by the Procurement Officer to ascertain bidder's responsibility/ offeror's susceptibility of being selected for award in connection with the certified DBE participation goal.

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**MDOT DBE FORM A**  
**FEDERALLY-FUNDED CONTRACTS**  
**CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**PAGE 2 OF 2**

I acknowledge that if I fail to return each completed document (in 2 (a) through (d)) within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award or not susceptible of being selected for award.

**3. Information Provided to DBE firms**

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

**4. Products and Services Provided by DBE firms**

I hereby affirm that the DBEs are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is true to the best of my knowledge, information and belief.

\_\_\_\_\_  
Company Name

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

CONTRACT PROVISIONS  
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**MDOT DBE FORM B  
FEDERALLY-FUNDED CONTRACTS  
DBE PARTICIPATION SCHEDULE**

**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**

**PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT PART 2 WITH THE BID/PROPOSAL AS REQUIRED, THE BID SHALL BE DEEMED NOT RESPONSIVE OR THE PROPOSAL SHALL BE DEEMED NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.**

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\*\*\* STOP \*\*\*

**FORM INSTRUCTIONS  
PLEASE READ BEFORE COMPLETING THIS FORM**

1. Please refer to the Maryland Department of Transportation (MDOT) DBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified for 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, please visit [www.naics.com](http://www.naics.com). 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 DBE participation goal.
2. In order to be counted for purposes of achieving the DBE participation goal, the firm must be certified for that specific NAICS (“DBE” for Federally-funded projects designation after NAICS Code). **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **will not be counted** for purposes of achieving the DBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the **first step** in determining whether a DBE firm is certified and eligible to receive DBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm’s Products/Services Description in the DBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the DBE participation goal.
4. If you have any questions as to whether a firm is MDOT DBE certified, or if it is certified to perform specific services or provide specific products, please call MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or send an email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us).

**CONTRACT PROVISIONS**  
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**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**  
**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**  
**PAGE 2 OF 4**

5. The Contractor's subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet a DBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this DBE Participation Schedule.
6. For each DBE firm that is being used as supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the DBE participation goal:**
  - A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.
  - B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the DBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no DBE participation credit will be given for the supply of these products.
  - C. For purposes of achieving the DBE participation goal, you may count only the amount of any reasonable fee that the DBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the DBE Participation Schedule, please divide the amount of any reasonable fee that the DBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.
  - D. Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO please continue to Item E. If the answer is YES, for purposes of achieving the DBE participation goal, you may count the total amount of the subcontract. For Column 3 of the DBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1. discretion

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**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**  
**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**  
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- E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the DBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the DBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the DBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
7. For each DBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the DBE participation goal**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.
- Example:** \$ 2,500 (Total Subcontract Amount) ÷ \$10,000 (Total Contract Value) x 100 = 25%.
8. Please note that for USDOT-funded projects, a DBE prime may count towards its DBE participation goal work performed by its own forces. Include information about the DBE prime in Part 2.
9. **WARNING:** The percentage of DBE participation, computed using the dollar amounts in Column 3 for all of the DBE firms listed in Part 2, **MUST** at least equal the DBE participation goal as set forth in MDOT DBE Form A – Federally-Funded Contracts for this solicitation. If the bidder/offeror is unable to achieve the DBE participation goals, then the bidder/offeror must request a waiver in Form A or the bid will be deemed not responsive, or the proposal not susceptible of being selected for award. You may wish to use the Goal Worksheet shown below to assist you in calculating the percentage and confirming that you have met the applicable DBE participation goal.



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**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**  
**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**  
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<b>GOAL WORKSHEET</b>	
Total DBE Firm Participation (Add percentages in Column 3 for all DBE firms listed in DBE Participation Schedule)	(A) _____%
The percentage amount in Box A above should be equal to the percentage amount in Box E below.	
Add <i>Countable</i> Subcontract Amounts (see 6 through 8 of Instructions) for all DBE firms listed in DBE Participation Schedule, and insert in Box B	(B) \$ _____
Insert the Total Contract Amount in Box C	(C) \$ _____
Divide Box B by Box C and Insert in Box D	(D) = _____
Multiply Box D by 100 and insert in Box E	(E) = _____%

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**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**  
**PART 2 – DBE PARTICIPATION SCHEDULE**

**PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT PART 2 WITH THE BID/PROPOSAL AS REQUIRED, THE BID SHALL BE DEEMED NOT RESPONSIVE OR THE PROPOSAL SHALL BE DEEMED NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.**

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Prime Contractor	Project Description	Solicitation Number

**LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.**

COLUMN 1	COLUMN 2	COLUMN 3
		Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
<b>NAME OF DBE SUBCONTRACTOR AND TIER</b>	<b>CERTIFICATION NO.</b>	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
<input type="checkbox"/> Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	<b>Certification Number:</b>  <hr/>	<b>3.1. <u>TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).</u></b>  _____% (Percentage for purposes of calculating achievement of DBE Participation goal)  <b>3.2 <u>TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS).</u></b>  _____% Total percentage of Supplies/Products  x _____ 60% (60% Rule)  _____% (Percentage for purposes of calculating achievement of DBE Participation goal)

Please check if Continuation Sheets are attached.

**CONTRACT PROVISIONS**  
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**MDOT DBE FORM B  
FEDERALLY-FUNDED CONTRACTS  
DBE PARTICIPATION SCHEDULE  
CONTINUATION SHEET**

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Prime Contractor	Project Description	Solicitation Number

**LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.**

COLUMN 1	COLUMN 2	COLUMN 3
		Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
<b>NAME OF DBE SUBCONTRACTOR AND TIER</b>	<b>CERTIFICATION NO.</b>	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
<input type="checkbox"/> Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	<b>Certification Number:</b> <hr/>	<p><b>3.1. TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).</b></p> <p>_____ % (Percentage for purposes of calculating achievement of DBE Participation goal)</p> <p><b>3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS).</b></p> <p>_____ % Total percentage of Supplies/Products</p> <p>x _____ 60% (60% Rule)</p> <p>_____ % (Percentage for purposes of calculating achievement of DBE Participation goal)</p>

Please check if Continuation Sheets are attached.

**CONTRACT PROVISIONS**  
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**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**

**PART 3 – CERTIFICATION FOR DBE PARTICIPATION SCHEDULE**

**PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL AS DIRECTED IN THE SOLICITATION.**

I hereby affirm that I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT DBE Directory for each of the DBE firms listed in Part 2 of this DBE Form B for purposes of achieving the DBE participation goal that was identified in the DBE Form A that I submitted with this solicitation, and that the DBE firms listed are only performing those products/services/areas of work for which they are certified. I also hereby affirm that I have read and understand the form instructions set forth in Part 1 of this DBE Form B.

The undersigned Prime Contractor 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 or proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or proposal.

I solemnly affirm under the penalties of perjury that the contents of Parts 2 and 3 of MDOT DBE Form B are true to the best of my knowledge, information and belief.

---

Company Name

---

Signature of Representative

---

Address

---

Printed Name and Title

---

City, State and Zip Code

---

Date

**CONTRACT PROVISIONS**  
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**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS**  
**TO MEET MBE/DBE PARTICIPATION GOALS**

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

**I. Definitions**

**MBE/DBE Goal(s)** – “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

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

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

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**Identified Items of Work** – “Identified Items of Work” means the bid 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/DBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE/DBE Firms to increase the likelihood that the MBE/DBE 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 bidder/offeror identified as possible items of work for performance by MBE/DBE Firms and should include all reasonably identifiable work opportunities.

**MBE/DBE Firms** – For State-funded contracts, “MBE/DBE Firms” refers to certified **MBE** Firms. Certified MBE Firms can participate in the State’s MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified **DBE** Firms. Certified DBE Firms can participate in the federal DBE Program.

**II. Types of Actions MDOT will Consider**

The bidder/offeror is responsible for making relevant portions of the work available to MBE/DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/DBE subcontractors and suppliers, so as to facilitate MBE/DBE participation. The following is a list of types of actions MDOT will consider as part of the bidder's/offeror’s Good Faith Efforts when the bidder/offeror fails to meet the MBE/DBE 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 Bid Items as Work for MBE/DBE Firms**

1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE/DBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offeror shall make all reasonable efforts to solicit quotes from MBE Firms or DBE Firms, whichever is appropriate, to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE/DBE Firms to increase the likelihood that the MBE/DBE Goal(s) will be achieved.

2. Identified Items of Work by Bidders/Offerors

(a) When the procurement does not include a list of Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE/DBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE/DBE 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

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contract with its own organization does not relieve the bidder/offeror of the responsibility to make Good Faith Efforts.

**B. Identify MBE Firms or DBE Firms to Solicit**

1. DBE Firms Identified in Procurements

(a) Certain procurements will include a list of the DBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides

a list of Identified DBE Firms, the bidder/offeror shall make all reasonable efforts to solicit those DBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE/DBE Directory to identify additional DBEs who may be available to perform the items of work, such as DBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE/DBE Firms Identified by Bidders/Offerors

(a) When the procurement does not include a list of Identified MBE/DBE Firms, bidders/offerors should reasonably identify the MBE Firms or DBE Firms, whichever is appropriate, that are available to perform the Identified Items of Work.

(b) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements)

(c) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified to perform the Identified Items of Work.

**C. Solicit MBE/DBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE/DBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE/DBE Directory, unless the bidder/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/DBE, and other requirements of the contract to

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assist MBE/DBE 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 DBEs listed in the procurement and any MBE/DBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE/DBE Firms who are no longer certified to perform the work as of the date the bidder/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/DBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible by the interested MBE/DBE.

4. Follow up on initial written solicitations by contacting DBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE/DBE Directory, unless the bidder/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/DBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE/DBE Firms could be informed of contracting and subcontracting opportunities;

(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; and

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

**D. Negotiate With Interested MBE/DBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE/DBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE/DBE Firms that were considered;



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- (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/DBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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/DBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE/DBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) the dollar difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (b) the percentage difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (c) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
- (d) the number of MBE/DBE firms that the bidder/offeror solicited for that portion of the work;
- (e) whether the work described in the MBE/DBE and Non-MBE/DBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
- (f) the number of quotes received by the bidder/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 bidder/offeror may not use its price for self-performing work as a basis for rejecting a MBE/DBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received by the" bidder/offeror refers to the average of the quotes received from all subcontractors, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.

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7. A bidder/offeror shall not reject a MBE/DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE/DBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offeror concludes is not acceptable, the bidder/offeror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offeror also must document the steps taken to verify the capabilities of the MBE/DBE and Non-MBE/DBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE/DBE 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/DBE 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 bids in the efforts to meet the project goal.

**E. Assisting Interested MBE/DBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeror:

1. made reasonable efforts to assist interested MBE/DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the bidder/offeror; and
2. made reasonable efforts to assist interested MBE/DBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE/DBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE/DBE and Non-MBE/DBE 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 a bidder/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 bidders/offerors in meeting the contract. For example, when the apparent successful bidder/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 bidder/offeror

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could have met the goal. If the apparent successful bidder/offeror fails to meet the goal, but meets or exceeds the average MBE/DBE participation obtained by other bidders/offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeror having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, a bidder/offeror seeking a waiver of the MBE/DBE 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 Form E, Part 2)**

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

**B. Outreach/Solicitation/Negotiation**

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a) through (e) and 49 C.F.R. Part 26, Appendix A. (**Complete Outreach Efforts Compliance Statement**)

2. A detailed statement of the efforts made to contact and negotiate with MBE/DBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (**Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations**); and

(b) a description of the information provided to MBE/DBE 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/DBE Firms (Complete Good Faith Efforts Form E, Part 4)**

1. For each MBE/DBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE/DBE and Non-MBE/DBE Firms quoting similar work.

2. For each certified MBE/DBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's

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conclusion, including the quotes received from all MBE/DBE and Non-MBE/DBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the bidder/offeror that the MBE/DBE contractor refused to sign the Minority Contractor Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.

2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

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**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 2 – CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION**

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Prime Contractor	Project Description	Solicitation Number

**PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.**

I hereby request a waiver of (1) the Minority Business Enterprise (MBE) participation goal and/or subgoal(s), (2) the Disadvantaged Business Enterprise (DBE) participation goal, or (3) a portion of the pertinent MBE/DBE participation goal and/or MBE subgoal(s) for this procurement.<sup>1</sup> I affirm that I have reviewed the Good Faith Efforts Guidance MBE/DBE Form E. I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of MDOT MBE/DBE Form E are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
Company Name

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

<sup>1</sup> MBE participation goals and subgoals apply to State-funded procurements. DBE participation goals apply to federally-funded procurements. Federally-funded contracts do not have subgoals.

\_\_\_\_\_

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**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 3 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO  
MBE/DBE FIRMS**

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Prime Contractor	Project Description	Solicitation Number

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

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

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**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 4 – IDENTIFIED MBE/DBE FIRMS AND RECORD OF SOLICITATIONS**

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<b>Prime Contractor</b>	<b>Project Description</b>	<b>Solicitation Number</b>

Identify the MBE/DBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE/DBE participation. Include the name of the MBE/DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE/DBE provided a quote, and whether the MBE/DBE is being used to meet the MBE/DBE participation goal. MBE/DBE Firms used to meet the participation goal must be included on the MBE/DBE Participation Schedule, Form B. Note: If the procurement includes a list of the MBE/DBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE/DBE Firms or explain why a specific MBE/DBE was not solicited. If the bidder/offeror identifies additional MBE/DBE Firms who may be available to perform Identified Items of Work, those additional MBE/DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE/DBE Firms must be attached to this form. If the bidder/offeror used a Non-MBE/DBE or is self-performing the identified items of work, Part 4 must be completed.

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Name of Identified MBE/DBE 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
<b>Firm Name:</b> _____  <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b>  <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 _____ —		<b>Date:</b>  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Date:</b>  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Time of Call:</b>  <b>Spoke With:</b>  <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/DBE <input type="checkbox"/> Used Non-MBE/DBE  <input type="checkbox"/> Self-performing
<b>Firm Name:</b> _____  <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b>  <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 _____ —		<b>Date:</b>  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Date:</b>  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Time of Call:</b>  <b>Spoke With:</b>  <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/DBE <input type="checkbox"/> Used Non-MBE/DBE  <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.



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**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 5 – ADDITIONAL INFORMATION REGARDING REJECTED MBE/DBE QUOTES**

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Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 3 indicates that a MBE/DBE quote was rejected because the bidder/offeror is using a Non-MBE/DBE 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/DBE, and if applicable, state the name of the Non-MBE/DBE. Also include the names of all MBE/DBE and Non-MBE/DBE Firms that provided a quote and the amount of each quote.

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

Please check if Additional Sheets are attached.

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**INFORMATION REQUIRED TO BE SUBMITTED FOR FEDERALLY ASSISTED CONTRACTS:**

**(a) Each bidder shall provide the following information:**

NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE      Age of the firm \_\_\_\_ years

Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000

\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000

\_\_\_\_ >\$10,000,000

**(b) Each bidder shall provide the following information for each firm quoting or considered as subcontractors and/or suppliers:**

NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE      Age of the firm \_\_\_\_ years

Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000

\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000

\_\_\_\_ > \$10,000,000

NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE      Age of the firm \_\_\_\_ years

Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000

\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000

\_\_\_\_ > \$10,000,000

**CONTRACT PROVISIONS**  
PROPOSAL FORM PACKET — FEDERAL

CONTRACT NO. PG6185470  
FAP NO. N/A  
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NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City State Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE Age of the firm \_\_\_\_ years  
Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000  
\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000  
\_\_\_\_ > \$10,000,000

NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City State Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE Age of the firm \_\_\_\_ years  
Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000  
\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000  
\_\_\_\_ > \$10,000,000

NAME OF FIRM: \_\_\_\_\_

\_\_\_\_\_  
Street and/or P.O. Box

\_\_\_\_\_  
City State Zip Code

\_\_\_\_ DBE \_\_\_\_ Non-DBE Age of the firm \_\_\_\_ years  
Annual gross receipts per last calendar year \_\_\_\_ <\$500,000 \_\_\_\_ \$500,000-1,000,000  
\_\_\_\_ \$1,000,000-3,000,000 \_\_\_\_ \$3,000,000-5,000,000 \_\_\_\_ \$5,000,000-10,000,000  
\_\_\_\_ > \$10,000,000

**Submit additional copies of this page as page 41A of 44, 41B of 44, etc. as necessary, and place them as the last pages in the Invitation for Bids. Place an "X" for "NO" on the last copy. Any additional Copies: \_\_\_\_\_ NO \_\_\_\_\_ YES**

**CONTRACT PROVISIONS**  
PROPOSAL FORM PACKET — FEDERAL

CONTRACT NO. PG6185470  
FAP NO. N/A  
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**EXTRA WORK, CONTRACT TIME, BONDING, LIQUIDATED DAMAGES, AND PROPOSAL GUARANTY**

**EXTRA WORK.** It is further proposed to do all "Extra Work" which may be required to complete the work contemplated at unit prices or lump sum prices to be agreed upon in writing prior to starting such extra work, or if such prices or sums cannot be agreed upon, to perform such work on a Force Account basis as specified in TC-7.03.

**CONTRACT TIME.** To commence work as specified in the "Notice to Proceed" and to prosecute the work to complete the contract within/or before

**May 1, 2023** (calendar date) (Pre-construction Phase only)

Any delay in awarding or the execution of this contract will not be considered as a basis for any monetary claim, however, an extension of time may be considered by the Administration, if warranted.

**BONDING.** When the Contractor's bid is \$100,000 or more, the Contractor shall furnish a Payment Bond and a Performance Bond in the full amount of the Contract Award as security for the construction and completion of the contract in conformance with the Plans, Standard Specifications, revisions thereto, General Provisions and Special Provisions.

To guarantee all of the work performed under this contract to be done in conformance with the Standard Specifications, revisions thereto, General Provisions and Special Provisions in a good workmanlike manner and to renew or repair any work which may be rejected due to defective materials or workmanship, prior to final completion and acceptance of the work, also we have the equipment, labor, supervision and financial capacity to perform this contract either with our organization or with Subcontractors.

**LIQUIDATED DAMAGES.** The Contractor is hereby advised that liquidated damages in the amount of

**Not Applicable for Preconstruction Services**

will be assessed for unauthorized extensions beyond the contracted time of completion.

**CONTRACT PROVISIONS**  
PROPOSAL FORM PACKET — FEDERAL

CONTRACT NO. PG6185470  
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**PROPOSAL GUARANTY.** A bid security is not required on Contract Proposals under \$100,000.

A bid security totaling at least five percent (5%) of the bid amount will be required on contracts of \$100,000 or over.

Acceptable forms of security for bid guaranty shall be per GP-2.07.

Enclosed herewith, find bid security based on at least five percent (5%) of the aggregate amount of the bid submitted, and made payable to the "State of Maryland". This bid security is a Proposal Guaranty (which is understood will be forfeited in the event the contract is not executed, if awarded to the signer of this affidavit).

**Commercial Nondiscrimination**

- A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, 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 other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- B. The Contractor agrees to include the clause contained in subsection (A.), above, in all subcontracts, regardless of the tier.
- C. 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 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 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State’s Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.