

Addendum #4  
To  
General Conditions for Consulting Services  
Dated July 16, 2020

Please delete numbered paragraph 21, Financial Disclosure, to General Conditions for Consulting Services dated January 1998, in its entirety and replace with the following language:

**"The Contractor shall comply with the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland requiring a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000."**

Please delete numbered paragraph 22 (Political Contribution Disclosure), including any previous addendum to General Conditions for Consulting Services dated January 1998 relating to paragraph 22, in its entirety and replace with the following language:

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

Addendum #3  
to  
General Conditions for Consulting Services  
Dated January 1998

Please delete numbered paragraph 25, Non-hiring of Employees, including any previous addendum to General Conditions for Consulting Services relating to paragraph 25, in their entirety and replace with the following language:

***“No official or employee of the State of Maryland, as defined under General Provisions Article, §5-101, 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 Consultant or an entity that is a subcontractor on this contract.***

***No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.”***

***Each invoice for payment under this Contract shall include a certification, signed and dated by an authorized representative, substantially similar to the following:***

***I certify that Consultant and its sub-consultants are in compliance with State Ethics Laws and related contract provisions prohibiting a former State employee from ever working on a matter in which a former State employee participated significantly as a State employee.***

***Consultant agrees to use its best efforts to ensure that the Consultant, sub-consultants and their employees comply with the restrictions on participation in General Provisions Article § 5-504(d).”***

Specifications for  
Consultant Engineering Services  
Addendum #2  
General Conditions for Consulting Services

In order to better ensure compliance with statutory and contractual ethics requirements, the following provisions and requirements are being issued as amendments to all Maryland State Highway Administration Architectural and Engineering Contracts:

Please delete numbered paragraph 25 to Addendum #1 to General Conditions for Consulting Services dated January 1998 in it's entirely and replace with the following language:

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

***Unless waived in writing by the Department or Administration, no member, officer, or employee of the Administration, during his / her tenure or for one year thereafter shall participate in or have any interest, direct or indirect, in this Contract or the proceeds thereof.***

***No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.”***

***On or about January 1 of each year this contract is in effect, Consultant agrees to provide to the Administration a list of employees of the Consultant and its sub-consultants who were employed by the Administration in the five years preceding the date of the list. Every three months follow submission of the annual list (April 1, July 1, October 1), Consultant agrees to provide an updated list if there have been any changes since submission of the annual list.***

***Each list provided shall include a certification, signed and dated by an authorized representative, substantially similar to the following:***

***I certify that Consultant and its sub-consultants are in compliance with the General Conditions prohibiting a former Administration employee from working on any Administration consultant services contract for one year after leaving the Administration and with State Ethics Laws and related contract provisions prohibiting a former State employee from ever working on a matter in which a former State employee participated significantly as a State employee.***

***Consultant agrees to use its best efforts to ensure that the Consultant, sub-consultants and their employees comply with the restrictions on participation in this Contract contained in the General Conditions and in State Government Article § 15-504(d)."***

Addendum #1  
to  
General Conditions for  
Consulting Services  
dated January 1998

The General Conditions for Consulting Services - 1998, Section II of the Specifications for Consulting Engineers' Services, is modified to include the following:

Paragraph 22, Political Contribution Disclosure is deleted and replaced with the following:

"22 Political Contribution Disclosure

The Consultant shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31."

The following paragraph is made a part of the General Conditions.

"44 Surety Bond Assistance Program

Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance, or payment bonds up to \$750,000.

Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic  
Development  
Maryland Small Business Development Financing  
Authority  
217 E. Redwood Street, 22nd Floor  
Baltimore, Maryland 21202  
410-767-6359"

7/1/98  
Revised 11/23/99

Paragraph 20, Non-discrimination in Employment, Sub-Paragraph A Compliance with State Law and Regulations, is deleted and replaced with the following:

"20 Non-discrimination Employment

A. Compliance with State Law and Regulations

The Consultant agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision

similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

Paragraph 25, Non-hiring of Employees is deleted and replaced with the following:

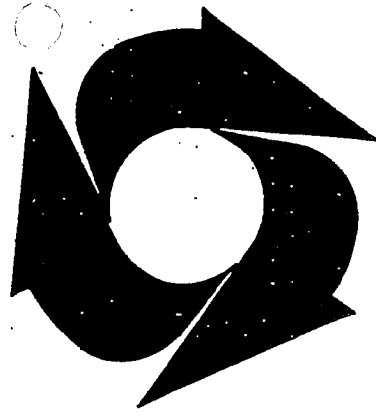
"25 Non-hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, §15-202, 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 Consultant or any entity that is a subcontractor on this contract.

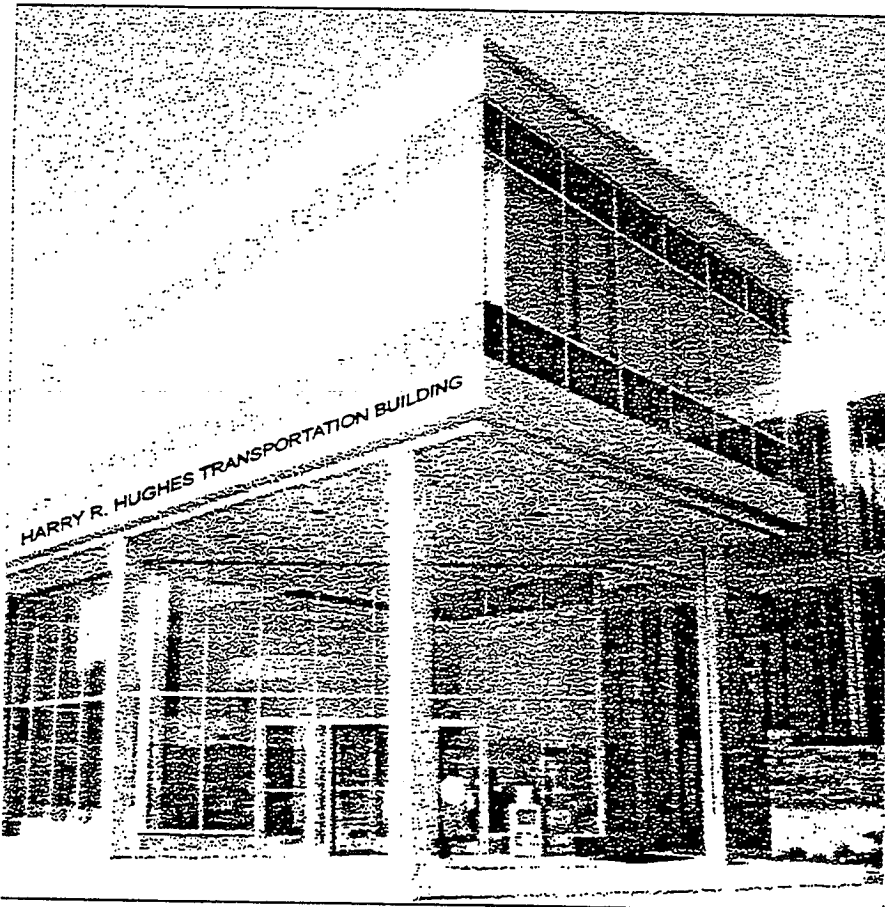
"Unless waived in writing by both the Department or Administration and appropriate federal agencies prior to award of the Contract, no member, officer, or employee of the Maryland Department of Transportation or of a local public body, whether elected or appointed, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. In this paragraph, local public body means the State of Maryland, any political sub-division of the State, or any agency of the State or political sub-division.

"No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom."

Revised 4/2/02

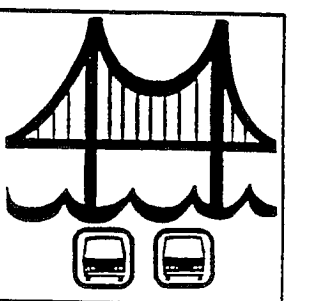
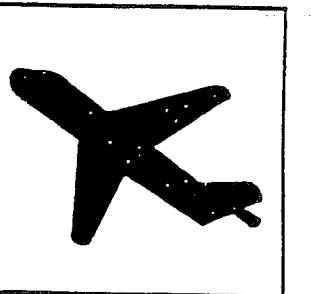
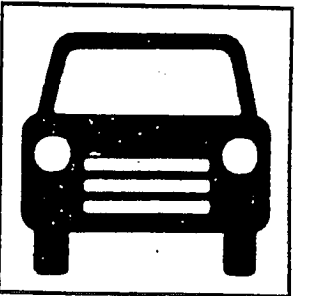
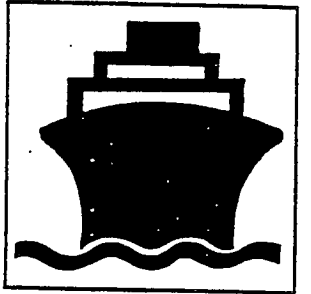
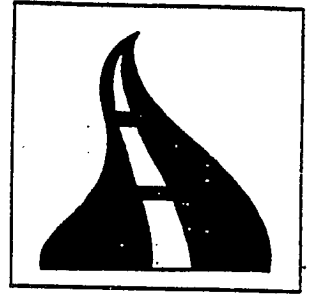


**Maryland Department of Transportation**



# **General Conditions For Consulting Services**

**JANUARY 1998**





**MARYLAND DEPARTMENT OF TRANSPORTATION**  
**GENERAL CONDITIONS FOR CONSULTANT CONTRACTS**

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**MARYLAND DEPARTMENT OF TRANSPORTATION  
GENERAL CONDITIONS  
CONSULTANT CONTRACTS**

**1. Definitions**

**A.** Wherever in these General Provisions or in other contract documents the following terms or abbreviations are used, the meaning shall be as follows:

**B. Organizational Structure**

The Maryland Department of Transportation is composed of the following jurisdictions:

- (i) Maryland Port Administration
- (ii) Mass Transit Administration
- (iii) State Highway Administration
- (iv) Maryland Aviation Administration
- (v) Motor Vehicle Administration
- (vi) Maryland Transportation Authority
- (vii) The Secretary's Office

**C. Organizational Definitions**

**Jurisdiction** - Any one of the above Administrations or Authorities within the Maryland Department of Transportation.

**Administration** - Any one of the five Administration units listed in B. above.

**Department** - The Maryland Department of Transportation (MDOT).

**Procurement Officer** - Any person authorized by a State agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

**Secretary** - The Chief Executive Officer of the Maryland Department of Transportation.

**D. General Definitions**

**Agreement** - Contract.

**Architectural Services** - Any professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training and experience. Architectural services includes consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of

services furnished by structural, civil, mechanical, and electrical engineers and other consultants. Architectural services does not include construction inspection services or services provided in connection with an energy performance contract.

**Award** - The decision by a procurement agency to execute a purchase agreement or contract after all necessary approvals have been obtained.

**Bid/Offer** - A statement of price, terms of sale, and description of the supplies, services, construction or construction related services offered by a vendor to the State, in response to an invitation for bids or offers under procurement by competitive sealed bidding or comparable small procurement procedures.

**Board** - The Board of Public Works of the State of Maryland.

**Business** - Any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

**Change Order** - A written order signed by the responsible Procurement Officer, directing a Consultant to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Consultant.

**Code** - The Annotated Code of Maryland.

**COMAR** - Code of Maryland Regulations.

**Construction** - The process of building, adding, altering, converting, relocating, renovating, replacing, repairing, improving, demolishing or restoring of real property in which the State has an interest.

**Consultant** - Any person, firm or business having a consulting contract with a State agency or seeking to perform consulting services for a State agency.

**Contract** - Any agreement entered into by a State agency for the procurement of supplies, services, construction, or any other item and includes:

- (1) Awards and notices of award;
- (2) Contracts of a fixed-price, cost-reimbursement, cost-plus-fixed-fee, fixed-price incentive, or cost-plus incentive fee type;
- (3) Contracts providing for the issuance of job or task orders;
- (4) Leases;
- (5) Letter contracts;
- (6) Purchase orders;

- (7) Supplemental agreements with respect to any of these;
- (8) Orders; and
- (9) Grants.

Contract does not include:

- (1) Collective bargaining agreements with employee organizations; or
- (2) Medicaid, Medicare, Judicare, or similar reimbursement contracts for which user eligibility and cost are set by law or regulation.

**Contract Modification** - Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the Contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, reinstatements, or options/renewals.

**Contractor** - Any person having a contract with a State agency. Contractor does not include employees with labor contracts (collective bargaining agreements).

**Day** - Calendar day unless otherwise designated.

**Engineering Services** - Any professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment, and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences. Engineering services includes consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services. Engineering services does not include the inspection of construction not requiring engineering training or services provided in connection with an energy performance contract.

**Extension** - As applied to contracts for the performance of architect/engineer services, means a change in the scope of the services to be performed by the architect/engineer by including in the Contract a requirement for the performance of phases of services not previously included.

**Extra Work Order** - Change order.

**Firm** - Business

**Invitation for Bids** - Any document, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and small procurement procedures including requests for quotations.

**Minority Business Enterprise** - Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled and is "Certified" by the MDOT. Certified means that the Department of Transportation, through established procedures, has determined that a legal entity is a minority business enterprise.

**Minority Person** - A member of a socially or economically disadvantaged minority group, including African American/Black (not of Hispanic origin), Hispanic American, Asian American, Native American, Alaska natives, Asians, Pacific Islanders, Women, and the Physically or Mentally Disabled.

**Notice to Proceed** - A written notice to the Consultant of the date on or before which he/she shall begin the prosecution of the work to be done under the Contract.

**Offeror** - Means a person or entity that desires to enter into a Contract with the State.

**Person** - Means any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club or other organization or legal entity.

**Price Proposal** - A consultant written price derivation response, with required support documentation and affidavits, to a MDOT request for price from a Consultant technically selected for a specific Project. The Price Proposal shall be signed by the person(s) required to legally bind the Consultant to the Proposal.

**Procurement** - Includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**Procurement Agency** - Any State agency which is authorized by law or regulations to procure or contract.

**Proposal** - The response by an offeror to a solicitation of the State for a supply or service. The response may include but is not limited to an offeror's price and terms for the proposed Contract, a description of technical expertise, work experience and other information as requested in the solicitation.

**Public Improvement** - The construction, maintenance and repair of any building, structure or other public work now or hereafter constructed or acquired by the State or any State agency.

**Quotation - Bid.**

**Request for Proposals** - Any document, whether attached or incorporated by reference, used for soliciting proposals under procurement by competitive sealed proposals, noncompetitive negotiations, multi-step and comparable small procurement procedures.

**Resident Business** - A resident business is defined as a business enterprise that has a Maryland address, is registered to do business in the State of Maryland, employs Maryland residents, and regularly conducts business within the State. The term includes subsidiaries, divisions and branches of business headquartered outside of the State of Maryland.

**Responsible Bidder or Offeror** - A person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.

**Services** - The rendering of a person's time, effort or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance of services. It includes but is not limited to the professional, personal and/or contractual services provided by attorneys, architects, engineers, accountants, physicians, consultants, appraisers, land surveyors, and property management, where the service is associated with the provision of expertise and/or labor. "Services" does not include the work normally associated with the repair and/or maintenance of facilities, structures, or building systems defined as "maintenance."

**Solicitation** - Invitation for bids, request for quotations, request for proposals, or any other method or instrument used to provide public notice and advertisement of a State agency's intent to procure supplies, services, and construction.

**State** - The State of Maryland acting through its authorized representative.

**State Agency** - Any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundations, fund, department, institute, institution, public corporation, service, trust, university, or other unit of the Executive Branch of the State Government and includes any subunit within any of these units.

**Supplemental Agreement** - Any contract modification which is accomplished by the mutual action of the parties.

**Technical Proposal** - A consultant written technical response to a MDOT Request for Proposals for a specific Project. The Technical Proposal shall be signed by the person(s) required to legally bind the Consultant to the Proposal.

**Transportation Board** - The Transportation Professional Services Selection Board (TPSSB).

**Using Agency** - Any State agency which uses any supplies, services, or construction procured under the Maryland procurement law or regulations.

**Work** - Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.

2. **Proposal Guaranty**

- A. If required for a procurement in excess of \$100,000 a proposal will not be considered unless accompanied by proposal security in an amount not less than 5% of the amount proposed, and made payable to the State of Maryland.
- B. Acceptable security for proposal guaranty shall be as stated in COMAR 21.06.07.01.

3. **Public Information Act Notice**

Consultants offering proposals should give specific attention to the identification of those portions of their proposals which 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 Maryland Public Information Act, State Government Article, Title 10, Subtitle 6 of the Annotated Code of Maryland.

4. **Contract Administration**

This agreement will be administered on behalf of the Department or Administration as the case may be, by the Procurement Officer.

5. **Authority of the Procurement Officer**

- A. The Procurement Officer shall decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all plans and/or specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Consultant.

- B. The Procurement Officer shall determine the amount of work performed to be paid for under the Contract.
- C. The Procurement Officer may authorize progress payments for work satisfactorily completed, subject to such retainage that the Procurement Officer deems appropriate.

6. Initiation of Work

The Consultant shall not commence performance of the services until the Consultant receives a formal written Notice to Proceed from the Department or Administration.

7. Indemnification and Insurance

A. Responsibility for Claims and Liability

The Consultant(s) shall indemnify and save harmless the Department of Transportation, the Administration, their Officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description arising out of or resulting from errors, omissions, negligent acts, negligent performance or nonperformance of the services of the Consultant or those of his subcontractors, agents or employees under this Contract, or arising from or based on the violation of applicable federal, state or local law, ordinance, regulations, order or decree, whether by himself or his employees or subcontractors.

Further, the Consultant shall pay any claims for personal injury, bodily injury or property damage which the Consultant is legally obligated to pay and shall indemnify the State against such claims. The Consultant shall undertake to defend any third party claim seeking such damages.

B. Insurance Requirements

The Consultant shall carry and maintain in full force and effect for the duration of this Contract, and any supplement or extension thereto, the insurance coverage specified below, and any other coverage specified by the Department or Administration, in the amounts specified elsewhere in the Contract documents. The Consultant shall submit to the Department or Administration a certificate of insurance indicating the existence of coverage required by this provision. Policies shall be issued by an insurance company authorized to do business in the State of Maryland and approved by the Department or Administration.

(1) Comprehensive General Liability Insurance

Occurrence form of Comprehensive General Liability Insurance with Comprehensive Broad Form endorsement including, but not limited to, coverage for damage to persons or property arising out of or relating to



the performance of work under this Contract by the Consultant, its subcontractors, employees and agents.

(2) Professional Liability Insurance

Professional Liability Insurance Policy which covers the Indemnification Clause of this Contract (paragraph 7.A above) as it relates to errors, omissions, negligent acts or negligent performance in the work performed under this Contract by the Consultant, its subcontractors, employees and agents.

(3) Workers' Compensation Insurance

Workers' Compensation as required by the laws of the State of Maryland, including Employer's Liability Coverage and coverage for the benefits set forth under the US Longshoremen and Harbor Workers Compensation Act, the Jones Act and other federal laws where applicable.

(4) Comprehensive Automobile Liability Insurance

Comprehensive Business Automobile Liability covering use of any motor vehicle to be used in conjunction with this Contract, including hire automobiles and non-owned automobiles. Loading and unloading of any motor vehicle must be covered by endorsement to the automobile liability policy or policies.

8. Assignment and Subcontracting

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided any such successor to the Consultant, whether such successor be an individual, a partnership, a corporation or other business entity, is acceptable to the Department or Administration, and neither this Contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Department or Administration.

9. Changes, Alterations or Modifications in the Services

The Department or Administration shall have the unilateral right, at its discretion, to change, alter or modify in writing the services provided for in this Contract, and such changes, alterations or modifications may be made even though it will result in an increase or decrease in the services of the Consultant or in the Contract cost thereof.

Contract modifications are effective only when approved by the Board or consistent with COMAR 21.02.01.04.

10. Delays and Extensions of Time

The Consultant agrees to prosecute the work continuously and diligently and no

charges or claims or damages shall be made by the Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

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

## 11. Remedies and Termination

### A. Correction of Errors, Defects and Omissions

The Consultant agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, including subcontracting services, without undue delays and without cost to the Department or Administration. The acceptance of the work set forth herein by the Department or Administration shall not relieve the Consultant of the responsibility of subsequent correction of such errors.

### B. Set-Off

The Department or Administration may deduct from and set-off against any amounts due and payable to the Consultant any back-charges or damages sustained by the Department or Administration by virtue of any breach of this Contract by the Consultant or by virtue of the failure or refusal of the Consultant to perform the services or any part of the services required under this Contract in a satisfactory manner. Nothing herein shall be construed to relieve the Consultant of liability for additional construction costs resulting from a failure to satisfactorily perform the services.

### C. Termination of Contract by Board of Public Works

- (1) The Board of Public Works may terminate without liability any Contract, including architectural or engineering services, and may deduct from the Contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this condition, if:
  - a. There has been any conviction of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the Contract; or
  - b. There has been any breach or violation of any provision of Title 18 of State Finance and Procurement Article; or the Contract provision

Against contingent fees required by § 15-19 of State Finance and Procurement Article of the Annotated Code of Maryland.

(2) Payments on termination of Contract. If the Contract is terminated under this general condition, after the State deducts any amount under Subsection C (1) above, the Consultant:

- a. May be paid only the earned value of the work done to the date of termination, plus termination costs;
- b. Shall refund all profits or fixed fees realized under the Contract; and
- c. Is liable for any costs incurred over the maximum amount payable to the Consultant under the Contract for the State to complete the work undertaken.

D. Termination for Default

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

E. Termination for Convenience of the State

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

F. Obligations of Consultant Upon Termination

Upon notice of termination as provided in Paragraphs C. D. and E. above, the

Consultant shall:

- (1) Take immediate action to achieve orderly discontinuation of its work and demobilize its work force to minimize the incurrence of costs.
- (2) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to the Department or Administration in the manner and to the extent directed by the Department or Administration all of the right, title and, if ordered by the Department or Administration, possession and interest of Consultant under the orders or subcontracts terminated.
- (3) Transfer title to the Department or Administration of all materials, equipment, data, drawings, specifications, reports, estimates and such other information accumulated by the Consultant in performing this Contract, for the cost of which the Consultant has been or will be reimbursed under this Contract.

G. Remedies Not Exclusive

The rights and remedies contained in this General Condition are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

12. Responsibility of Consultant

- A. The Consultant shall perform the services with that standard of care, skill, and diligence normally provided by a consultant, architect or engineer in the performance of services similar to the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the Department or Administration, the Consultant shall be responsible for professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Consultant under this agreement.
- C. If the Consultant fails to perform the services, or any part of the services, in conformance with the standard set forth in Paragraph A. above, and such failure is made known to the Consultant within two years after expiration of this Contract, or within the specified warranty period, whichever is greater, the Consultant shall, if required by the Department or Administration, perform at its own expense and without additional cost to the Department or Administration, those services necessary for the correction of any deficiencies or failure. This obligation is in addition to and not in substitution for any other remedy available to the Department or Administration under Section 11 of these General Conditions.
- D. The Consultant shall furnish proof that he/she has the financial capacity to provide the services and that he/she is financially able, through his/her own

resources or through a qualified surety, to protect the Department or Administration from errors and omissions that might arise from the direct performance of the services or the performance of the services by third parties relying on the completed design or work product.

- E. Consultant agrees to include, on the face of all invoices billed to the Department or Administration, his/her Federal Tax Identification or Social Security Number.

### 13. Disputes

- A. This Contract is subject to the provisions of Title 15, Subtitle 2, State Finance and Procurement Article (Dispute Resolution) of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).
- B. Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause.
- D. A claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General. Unless a lesser period is provided by applicable statute, regulation, or this contract, the Consultant must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Consultant must submit to the procurement officer its written claim containing the information specified in COMAR 21.10.04.02.
- E. When a claim cannot be resolved by mutual agreement, the Consultant shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- F. The Consultant, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
- G. The Procurement Officer shall render a written decision on all claims within 180 days of receipt of the Consultant's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Procurement Officer shall notify the Consultant of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Consultant, by certified

mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the State.

- H. The Procurement Officer's decision shall be final and conclusive unless the Consultant mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.
- I. Pending resolution of a claim, the Consultant shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

**14. Professional Registration**

If the services covered by this Contract include the preparation of contract plans and documents for construction or maintenance contracts, the plans and documents prepared shall be reviewed and approved by architects or engineers registered to practice in the particular professional field in the State of Maryland.

**15. Availability of Data**

Each party hereto shall make available to the other party, without cost, all non-proprietary technical data under its control reasonably necessary to the performance of the services required under this Contract.

**16. Ownership of Documents**

The Consultant agrees that all data including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, computations, and customized computer software prepared by or for him under the terms of this Contract shall at any time during the performance of the services be made available to the Department or Administration upon request by the Department or Administration and shall become and remain the property of the Department or Administration upon termination or completion of the services. The Department or Administration shall have the right to use same at any time without restriction or limitation and without compensation to the Consultant other than that provided in the Contract.

**17. Retention of Records**

The Consultant shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit in accordance with COMAR 21.06.05 by authorized representatives of the State, including the procurement officer or his designee, or by the U.S. Department of Transportation and any other appropriate federal agency, at all reasonable times. The accounting records and all supportive documentation shall be maintained in such a manner that will provide

for a separation between direct and indirect costs. A similar provision shall be included in all subcontracts.

**18. Data Processing Services**

The Department or Administration shall review and approve the use of data processing in connection with the services under this Contract and may require that such services be provided by the Department or Administration. In the event that the Department or Administration allows the Consultant to provide these services, it will approve the computer installation to be utilized, the hardware configuration, the operating system, and the software package. The Department or Administration reserves the right to shift the site of such operations upon giving 15 days prior written notice, and the amount payable to the Consultant may be adjusted to reflect any change in cost which may result from such a site shift.

**19. Dissemination of Information**

During the term of this Contract, the Consultant shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the Department or Administration.

**20. Nondiscrimination in Employment**

**A. Compliance with State Law and Regulations**

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

**B. Compliance with Federal Law**

The Consultant will comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of said Department of Transportation (Title 49, Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

Consultants providing services to the State under this Contract herewith assure the State that they are conforming to the provision of the Civil Rights Act of 1964, and Section 202 of the Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

C. Nondiscrimination in Selection of Subcontractors

The Consultant, with regard to the work performed by it after award and prior to completion of the agreement, will not discriminate on the grounds race, color, age, sex, religion or national origin in the selection and retention of subcontractors, including the procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to non-discrimination on the grounds of race, color, age, sex, religion or national origin.

E. Information and Reports

The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or Administration or the federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refused to furnish this information, the Consultant shall so certify to the Department or Administration or the federal agency as appropriate and shall set forth what efforts it has made to obtain the information.

F. Sanctions for Non-Compliance

In the event of the Consultant's non-compliance with the nondiscrimination provisions of this Contract, the Department or Administration shall impose such sanctions as it may determine to be appropriate, including but not limited to:

- a. Withholding of payment to the Consultant under the Contract until the Consultant complies, and/or
- b. Cancellation, termination or suspension of the Contract in whole or in part.

G. Incorporation of Provisions

The Consultant will include the provisions of Paragraphs A. through F. in every subcontract, including procurement of materials and leases of equipment, unless



exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such actions with respect to any subcontract or procurement as the Department or Administration or the U.S. Government may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State and, in addition, the Consultant may request the U.S. to enter into such litigation to protect the interest of the government.

H. Nondiscrimination - Subcontractors

Prior to the Department's or Administration's issuance of written approval for the subcontracting of any portion of the services covered by this Contract, the Consultant must submit certification to the Department or Administration that the required Equal Employment Opportunity provisions, as set forth hereinbefore in this Section, are actually incorporated into the subcontract(s). Failure on the part of the Consultant to submit said certification shall be construed as non-compliance on the part of the Consultant and justification for the Department or Administration to impose such sanctions as set forth in Paragraph F. above.

21. Financial Disclosure

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

22. Political Contribution Disclosure

The Consultant shall comply with the provisions of Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall on or before February 1 of the following year file with the Secretary of the State of Maryland certain specified information to include disclosure of political contributions in excess of \$100 to a candidate for elective office in any primary or general election.

23. Personal Liability of Public Officials

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Department or Administration, Procurement Officer or other

authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

**24. Minority Business Enterprise and Affirmative Action**

- A. This Contract is subject to Executive Order 01.01.1970.15, December 9, 1970; amended by Order 01.01.1976.05, July 9, 1976 (Code of Fair Practices), and COMAR 21.11.04 Consultant's Affirmative Action Plan Review/Approval and Compliance Monitoring Process - DOT. This Contract is also subject to the applicable provisions of Title 14, Subtitle 3 of State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.11.03 Minority Business Enterprise Policies; and the provisions of COMAR 11.01.10 which incorporates by reference the current revision of the Minority Business Enterprise Program. Copies of the Minority Business Enterprise Program may be obtained from the Department of Transportation Fair Practices Officer, P.O. Box 8755, BWI Airport, Maryland 21240. This Contract is also subject to all applicable federal and State law and regulations pertaining to Minority Business Enterprise and Affirmative Action.
- B. To the extent any of the above laws or regulations are applicable to this Contract they are specifically incorporated herein.

**25. Non-Hiring of Employees**

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland, or any unit thereof.

Unless waived in writing by both the Department or Administration and appropriate federal agencies prior to award of the Contract, no member, officer, or employee of the Maryland Department of Transportation or of a local public body, whether elected or appointed, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. In this paragraph, local public body means the State of Maryland, any political sub-division of the State, or any agency of the State or political sub-division.

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom.

**26. Contingent Fee Prohibition**

- A. The consultant, architect, or engineer warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the consultant, architect, or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesper-

son or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

- B. For breach or violation of the above warranty, the Department or Administration shall have the right to terminate this Contract without liability, or at Department or Administration discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**27. Conflict of Interest Law**

It is unlawful for any State officer, employee, or agent to participate personally in his/her official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he/she, his/her spouse, parent, minor child, brother or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he/she is serving as an officer, director, trustee, partner, or employee is a party, or to which any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Section 3-101 et seq. of the Annotated Code of Maryland.

**28. Sanctions Upon Improper Acts**

In the event the Consultant or any of its officers, partners, principals or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Contract, the Contract may, in the discretion of the Department or Administration, be terminated.

Section 16-203 of State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.

Section 11-205 of State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding the State are incorporated into this Contract by reference.

Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement and Sanctions" is incorporated into this Contract by reference.

**29. Corporate Registration and Tax Payment Certification**

Corporations are required to execute a Certification of Corporation Registration and Tax Payment.

**30. Multi-Year Contracts Contingent Upon Appropriations**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Consultant's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Consultant and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Consultant as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**31. Cost and Price Certification (Applicable to Non-Architectural and Non-Engineering Services)**

- A. The Consultant by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
  - (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
- B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Consultant furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

**32. Truth-In-Negotiation Certification (Applicable to Architectural and Engineering Services Contracts)**

The Consultant, by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

- A. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the Contract date;
- B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State

is entitled to an adjustment in all appropriate items compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

- C. If additions are made to the original price of the Contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

### 33. Patents and Copyrights

#### A. Patent Rights

Any patentable result arising out of this Contract, as well as all information, designs, specifications, know-how, data, and findings shall be made available to the United States Government for public use, unless the U.S. Government, in a specific case, where it is legally permissible, determines that it is in the public interest that it not be so made available.

#### B. Patent and Copyright Indemnity

The Consultant shall indemnify, protect and save harmless the State, its officers, agents and employees from all claims, arising out of any patent or copyright infringements or claims thereof pertaining to any design, drawings, specifications, computer software development or other patentable or copyrighted items used by the Consultant.

### 34. Compliance with Laws

The Consultant hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance to its obligations under this Contract.

35. **Maryland Law Prevails**

The parties hereby agree that:

- A. This Contract was made and entered into in the State of Maryland, and under the laws of the State of Maryland.
- B. The law of the State of Maryland shall govern the resolution of any issue arising in connection with this Contract, including, but not limited to, all questions concerning the validity of this Contract, the capacity of the parties to enter therein, any modification or amendment thereto and the rights and obligations of the parties hereunder.

36. **Conflicts Between Federal Regulations and These General Conditions**

All requirements set forth in federal assistance instruments applicable to contracts let by the State under a federal assistance program shall be satisfied. Therefore, to the extent that the requirements which are specified in the federal assistance instrument conflict with regulations adopted under Title 21 of COMAR, the former shall control.

37. **General Conditions Controlling**

In event of a conflict between these General Conditions and any other provision of the Contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

38. **Bid Award - For Competitively Bid Contracts - Resident Business**

- A. When awarding a contract by competitive bidding, the Department or Administration may give a preference to the lowest responsive and responsible bid from a Maryland firm over that of a non-resident firm if the State in which the non-resident firm is located gives a resident business preference.
- B. The percentage of preference given under this section shall be identical to the preference given to its residents by the State in which the nonresident firm is located.
- C. This provision shall not apply if it conflicts with any federal grant or regulation affecting this Contract.

39. **Payment of State Obligations**

- A. Payments to the Consultant pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Consultant. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

- B. A proper invoice shall include a description of the items or services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract price(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Consultant's Federal Tax Identification Number or Social Security Number; the valid Contract charge number, and the name and address of the proper invoice recipient.
- C. In order to receive payment of interest, the Consultant must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed if it accrues more than one year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if a claim has been filed under State Finance and Procurement Article Section Title 15, Subtitle 2 of the Code.
- D. For the purposes of this Contract an amount will not be deemed due and payable if:
- (1) The amount invoiced is inconsistent with the Contract.
  - (2) The proper invoice has not been received by the party or office specified in the Contract.
  - (3) The invoice or performance under the Contract is in dispute or the Consultant has failed to otherwise comply with the provisions of the Contract.
  - (4) The item or services have not been accepted.
  - (5) The quantity of items delivered is less than the quantity ordered.
  - (6) The items or services do not meet the quality requirements of the Contract.
  - (7) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the agreement.
  - (8) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
  - (9) The Consultant has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the contract concerning performance under the Contract and compliance with its provisions.

40. Suspension of Work

The Procurement Officer unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State.

41. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

42. Insolvency

If the Consultant becomes insolvent, files a bankruptcy petition in any court, becomes the subject of an involuntary bankruptcy petition, makes a general assignment for the benefit of creditors, has a receiver appointed for assets, or ceases to conduct business, the Consultant shall be considered in default of the Contract. If any of these events occurs, the Consultant must immediately notify the Procurement Officer or designee.

January 1998