

MARYLAND DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY ADMINISTRATION

CONTRACT NO. MO0695172

FAP NO. N/A

**Competitive Sealed Proposal Procurement
Request for Qualifications (RFQ) / Request for
Proposals (RFP)
Progressive Design-Build (PDB)**

June 7, 2016

**IS 270 – Innovative Congestion
Management Contract**

Montgomery and Frederick Counties

**Minority Business Enterprises are encouraged to respond to
this Solicitation Notice.**

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I. INTRODUCTION

The Maryland State Highway Administration (SHA) is seeking the services of a qualified Design-Builder for a Design-Build contract as defined in the Code of Maryland Regulations (COMAR) 21.05.11. This contract will be procured using the “Competitive Sealed Proposals” procurement method as defined in COMAR 21.05.03.

This “Competitive Sealed Proposals” procurement method is a two-step process. The first step in this procurement is the Statement of Qualifications (SOQ) by interested Design-Builders. The Administration is seeking responses to this Request for Qualification (RFQ) from Design-Builders who are qualified and prepared in all respects to undertake the design and construction of the IS 270 Innovative Congestion Management (ICM) project.

Once the SOQ evaluations are completed, a reduced candidate list (RCL) of those Design-Builders considered most highly qualified shall be developed. If there is sufficient interest by qualified Design-Builders and the Administration is satisfied that there will be an acceptable level of response, then the Administration will request in writing the RCL to submit a Technical and Price Proposal as outlined in this document.

As part of the second step, the RCL may submit Proposed Technical Concepts (PTCs) to the Administration for review. The PTC process allows each Proposer to submit solutions it may propose in the Technical Proposal for Administration feedback. This process is intended to assist the Proposers in best determining which concepts it will propose for implementation in its Technical Proposal.

A. Progressive Design-Build Concept

This Progressive Design-Build (PDB) contract is a two-phase, fixed value contract. Phase one of the contract will be for the selected Design-Builder to provide design and preconstruction services to SHA to develop the project to the level necessary to submit a price for construction for work packages proposed by the Design-Builder.

Once the design has been completed to the necessary level for any work package to submit a price, the SHA will attempt to reconcile a Construction Agreed Price (CAP) for the construction of that work package. As multiple packages are allowed and anticipated, multiple CAPs may be agreed upon as long as the overall sum of all CAPs does not exceed the contract’s fixed value. If the SHA agrees to a CAP, then notice to proceed for phase two construction services would be issued for that package. The SHA reserves the right to not proceed with phase two of the contract and bid a package competitively if a CAP cannot be reached. If SHA chooses to deliver the project by other means, the selected Design-Builder **will not** be permitted to submit a proposal or bid.

The intent is to form a partnership with the owner (SHA) and the Design-Builder. The goals of this partnership are to mitigate risk, streamline the design process, improve the decision making process with better information, and develop a project that meets the project goals while adhering to the budget. We anticipate the involvement of the Design-

Builder will help reduce errors in design, maximize the achievement of project goals, improve the overall constructability of the project and support the Practical Design process.

The fixed value of the contract is an aggregate of the Design-Builder's Design and Preconstruction services fee, the Design-Builder's Construction Management Fee, and the Construction services costs. Construction Services will include all CAPs, costs for any necessary right-of-way acquisition, and costs for any utility relocations required due to the construction of the contract. The fixed value of the contract will be \$100,000,000.

When right-of-way acquisition is required, the Administration will establish the right-of-way costs based on the needs established by the Design-Builder. All costs for right-of-way acquisition will be subtracted from the established cost for Construction services. Right-of-way acquisition services are expected to be completed by the Administration; however, the Administration will consider placing acquisition services on the Design-Builder if agreed upon in the development of a CAP.

When utility relocations are required, the Administration will establish relocation costs for utilities to be relocated by parties other than the Design-Builder. Any costs for utility relocations to be performed by the Design-Builder will be included in any CAP. All costs for utility relocations will be subtracted from the established cost for Construction services.

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 Design-Builder or Contractor, should a CAP for final Construction not be agreed upon. Early right-of-way acquisition, utility work or Construction work may be considered with the understanding that early phases are not a guarantee of agreement of a CAP for final Construction. Early phases must be independent and severable from the final Construction package, with well-defined end point. Construction will not begin until a CAP has been accepted for a Plans, Specifications & Estimates (PS&E) package.

Contract Provisions, General Provisions, Terms and Conditions and Technical Requirements

General Requirements

The Design-Builder shall complete all design and construction work in two phases, Phase IV - Final Design and Phase V – Partnering during design and construction, Review Shop Drawings, Revisions, Redesign Under Construction, As-Built Plans and provisions for expert court testimony.

The Design-Builder shall provide the services and perform tasks described in this Request for Proposals in compliance with the policies and procedures of the Administration and requirements set forth in “Volume II -Specifications for Consulting Engineers’ Services,” dated April 1986, Sections as follows:

- A) Section V Highway Design - (Phase IV)

- B) Section VI Structure Design - (Phase IV & V) Parts I through III
- C) Section VII Surveys and Plats (Phase IV)
- D) Section VIII Traffic Engineering (Phase IV)
- E) Section IX Landscape Architecture
- F) Section XI Critical Path Method

The Design-Builder shall comply with all Federal, State and local laws, ordinances and regulations applicable to the activities and obligations associated with this project.

Guidelines and References

All Project services shall be provided in accordance with typical engineering guidelines and practices and construction standards and specifications. Work shall be in accordance with the General Provisions and Terms and Conditions of the most current Standard Specifications for Construction and Materials and all provisions included in the RFQ/RFP's appendix.

Guidelines and references typically utilized by the Administration are included in the appendix. These may be followed or the Design-Builder may propose other guidelines and references to be utilized on this contract. Any guideline or reference proposed should be approved for usage by other transportation agencies or have been developed through organizations such as, but not limited to, the Transportation Research Board.

The Design-Builder will be required to develop and submit design exceptions when industry standard criteria are not achieved. This will include the accepted geometric design standards on the National Highway System for controlling criteria. Design exceptions will be developed after selection and are for the approval of the Administration.

Independent Cost Estimator

An independent party will be hired by the Administration to prepare a series of detailed estimates. These estimates will be performed independent of the Design-Builder and will be used as a basis for cost comparison to the Opinion of Probable Construction Cost and the Construction Agreed Price.

Opinion of Probable Construction Cost

The Opinion of Probable Construction Cost (OPCC) is the actual Construction cost the Design-Builder estimates to build all aspects of a Construction package. These are required at agreed to pricing milestones for each phase, procurement, or Construction package.

Construction Agreed Price

The Construction Agreed Price (CAP) is the maximum dollar amount agreed upon between the Design-Builder and the Administration for the Construction a package. It

shall include all final design, permitting, Construction, labor, equipment and materials and all incidentals necessary to complete the Construction of the package.

Once a CAP is agreed upon, a zero dollar change order will be executed to subtract the amount of the CAP, and any associated right-of-way and utility relocation costs, from the Construction services costs submitted with the original Price Proposal. No construction may begin until a change order has been executed for a CAP. A proportionate amount of the Construction Management Fee will be included in the CAP. This proportionate amount will be determined as the percentage of the Construction Management Fee versus the Construction services costs at the time of the original Price Proposal submittal. For example, if the Construction Management Fee was five percent when compared to the Construction services costs, this amount will be added to the CAP and subtracted from the original Construction Management Fee as part of the change order. Payment for the Construction of the project will be paid through an agreed upon work breakdown structure.

SHA anticipates initiating CAPs based on 65% or greater complete contract documents and intends to establish a CAP after a NEPA/MEPA decision document has been signed for the project limits covered by the CAP. These contract documents may include preliminary plans with specifications that provide the performance requirements for final design and construction by the Design-Builder or could be a substantially complete design plans with typical material specifications. Multiple sections, phases, or Construction package CAPs may be developed and accepted during the Design and Construction phases of this project. SHA reserves the right not to award any part(s) or all of the Construction Services. The selected proposer shall deliver to SHA a proposed CAP and CAP Supporting Documents for an appropriate Long Lead Time Procurement (LLTP) or Construction phase.

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

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

SHA will consider establishing a risk sharing pool with the Design-Builder during the Design and Preconstruction 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 CAP, but not detailed enough for inclusion in the CAP. Any and all items fitting this category will be identified separately from the CAP and will be monitored for progress and cost. The actual process will be agreed upon as part of the development of the CAP.

Design and Preconstruction Services

The selected Design-Builder will be awarded a contract, prepared by and administered by the SHA. The cost of the contract will be a fixed value and submitted as part of the Price

Proposal as defined in Section XII. C. of this RFP. The requirements for the Scope of Services of the contract are outlined in Section I. F. of this RFP.

Design-Builder Submits Price for Project (Early Procurement)

The Design-Builder may be asked to procure long lead materials that may be in short supply or require longer than desired lead times from purchase to delivery. 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 Design-Builder 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 Design-Builder shall submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the item(s). Upon opening the Design-Builder'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 Administration will evaluate if the CAP, Engineer's Estimate, and the ICE were within acceptable tolerance.

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 SHA offices.

If prices are not acceptable, the Administration may enter into a process of risk identification that identifies price differences between the Design-Builder's cost estimate and the Independent Cost Estimate. Following the resolution of these risk issues, the items may be re-priced. If this is not successful, SHA has the option to accept the offered price or to procure the items later as part of the CAP process for the Construction project or by some other method.

The Construction change order 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 for the change order to be executed, the Design-Builder must submit commitments sufficient to reach the goal or demonstrate good faith efforts to meet the goal.

Design-Builder Submits Price for Early Construction Package

If time and/or money can be saved by allowing the Design-Builder to start initial construction work prior to the completion of the total Construction package, the Administration may ask the Design-Builder 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 Design-Builder 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.
- SHA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
- The Design-Builder 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 Design-Builder will submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Design-Builder'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 CAP, Engineer's Estimate, and the ICE were within acceptable tolerance.
- If the DBE goal is greater than zero, at the time of price submittal the Design-Builder 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 SHA offices.

If the prices are acceptable, the Administration will execute a Construction change order 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 Design-Builder's cost estimate and the Independent Cost Estimate. Following the resolution of these risk issues, the work may be re-priced up to two more times. SHA has the option to accept the revised price or to terminate the PDB process and procure the Construction project by some other method.

Design-Builder Submits CAP Price for Project

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

- The Design Builder will produce a set of plans and specifications defining all work to be accomplished. The plans will also show all work accomplished under any previous Early Construction packages.
- SHA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
- The Design-Builder 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 Design-Builder will submit a sealed price to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Design-Builder'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 CAP, Engineer's Estimate, and the ICE were within acceptable tolerance.
- If the DBE goal is greater than zero, at the time of price submittal the Design-Builder 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 SHA offices.

If the prices are acceptable, the Administration will execute a Construction change order for the work.

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

Design-Builder Builds Project

From this point forward, the work proceeds as per the change order.

B. Project Overview

The project area is the IS 270 corridor from IS 495 (including the IS 270 spur) to IS 70. The study corridor is one of the most congested in Maryland with average daily traffic of approximately 240,000 in many segments. Over saturated conditions and extended peak periods greatly impact travel time reliability.

The purpose of this project to reduce recurring and non-recurring congestion and improve travel time reliability along the IS 270 corridor. Recurring congestion is congestion that happens virtually every day. Non-recurring congestion is congestion due to non-recurring causes, such as crashes, disabled vehicles, and adverse weather events. Reliability means consistency or dependability in travel times as measured from day to day across different times of the day. The SHA has not developed any preferred solutions, but is looking for the Design-Builder to provide implementable, practical, bold and innovative solutions to increase vehicle throughput, reduce delay and increase travel time reliability along IS 270 within the contract budget.

C. **Goals**

The contract is intended to address the following goals:

1. **Mobility** – Provide improvements that maximize vehicle throughput, minimize vehicle travel times, and create a more predictable commuter trip along IS 270.
2. **Safety** – Provide for a safer IS 270 corridor.
3. **Operability/Maintainability/Adaptability** – Provide improvements that minimize SHA operations and maintenance activities while being adaptable to future transportation technological advancements.
4. **Well-Managed Project** – Provide a Project Management and Work Plan that addresses communications, coordination and risk management, achieves a collaborative partnership with all members of the project team and stakeholders, and successfully advances the project goals.

D. **Key Issues**

1. High Occupancy Vehicle (HOV) Lanes
 - The inside travel lane of IS 270 functions as an HOV lane from 6:00 am to 9:00 am in the southbound directions from IS 370 to IS 495 and from 3:30 pm to 6:30 pm in the northbound direction from IS 495 to MD 121. HOV usage on I-270 will be required to be maintained for the existing longitudinal limits as part of this contract. Lateral shifts of the HOV lane will require an equivalency study and approval by FHWA.
2. Maximize the scope within the budget
 - Implement Innovative Congestion Relief strategies and technologies to the maximum extent within the means of the budget.
3. Coordination with other projects
 - The Watkins Mill Interchange Project is within the contract limits. Depending on the proposed Innovative Congestion Management (ICM) scope, coordination with that project may be required to ensure compatibility. Any redesign, and associated permit modifications, of the Watkins Mill Interchange will be performed by SHA.
4. National Environmental Policy Act (NEPA) / Maryland Environmental Policy

Act (MEPA)

- Project(s) will require NEPA approval from the Federal Highway Administration (FHWA) when federal actions will be required (e.g. design exceptions, Interstate Access Point Approval [IAPA]). If no federal action is required, then MEPA approval will be needed. Multiple environmental documents may be developed for the contract. Each separate project for an environmental document must be a standalone construction project that connects logical termini and be of sufficient length, have independent utility, and not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. Any NEPA/MEPA document will be prepared by SHA. The Design-Builder will have no decision making responsibility with respect to the NEPA/MEPA process but will provide information needed about the project and possible mitigation actions.
- Public Involvement will be needed as part of NEPA/MEPA and should ensure travel shed is covered, not just the immediate project area.
- The requirements of the SHA Noise Policy must be met for the Design-Builder's improvements. However, noise barriers, if required, will be excluded from any work package or CAP, and will not be paid for from the contract budget. The Administration will be responsible for the costs associated with noise barriers and the additional impacts or requirements they incur, including additional right-of-way, utility relocations, grading, drainage, stormwater management, retaining walls, etc.
- DNR managed land (Seneca Creek State Park) is within the contract limits.

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5. Minimize Environmental Impacts

- No permits have been obtained. Agency coordination will be required to secure necessary permits for any environmental impacts.
- The Design-Builder will prepare permit applications for submittal by the Administration.
- Environmental impacts due to Design-Builder's project should be minimized to the extent practical.
- Mitigation may be required by permitting agencies depending on impacts to environmental features as a result of Design-Builder's project.

6. Minimize utility and property impacts and relocations

- Utility and property impacts due to Design-Builder's project should be minimized to the extent practical.
- All costs for third party utility relocations and property impacts will be subtracted from the fixed value contract.

E. **Project Status**

The current status of aspects of the project is as follows:

Mapping and Survey

Photogrammetry (10-scale) for the existing mainline roadway was developed from outside shoulder to outside shoulder. Its limits are from south of Democracy Boulevard to north of MD 124. Additional land surveys were conducted to other features, such as pipe outfalls and the outside girders of bridges over IS 270. Additionally, survey from the Watkins Mill Interchange Project is available.

Aerial mapping (100-scale) was prepared from photographs. The data begins at the American Legion Bridge and ends north of Middlebrook Road. It includes both spurs and IS 495 between the spurs.

Contour surface models and topographic base maps were prepared on the basis of the mapping and photogrammetry. All mapping and photogrammetry was performed in the Maryland State Plane Grid, NAD 83/91 and NAVD 88. The Design-Builder must obtain all additional survey data necessary for the design, construction, and verification of surface model for all design activities.

As-builts that are available have been collected to supplement the survey information above and are available in electronic format on ProjectWise.

Geotechnical

The Administration has performed ground penetrating radar (GPR) and obtained soil borings on existing shoulders at selected locations along the project corridor (refer to appendices for locations) and performed laboratory testing of the samples. The boring logs and laboratory test data are included on ProjectWise. Pavement history has been collected and provided as supplemental information.

Soils information from the Watkins Mill Interchange Project is also included on ProjectWise.

These studies were performed with reasonable care and recorded in good faith. The Administration considers the information Engineering Data and will stand behind its accuracy at the location studied. The Administration assumes no responsibility in respect to the sufficiency of the studies for design. The Design-Builder will need to perform additional geotechnical testing and analysis to complete the project. The Design-Builder is responsible for performing a complete geotechnical program including additional borings, sampling, in-situ and laboratory testing, analysis, and design, as necessary to complete design and construction.

Utilities

The Administration has had a utility designating service locate underground utilities which identified the existence of utilities at their horizontal locations. Utility as-built plans used to assist in developing the utility designation have been provided on ProjectWise as supplemental information. The utility designation was developed from IS 495 to Great Seneca Creek north of MD 124. Inaccuracies in information regarding the locations of an underground utility based on utility designation information shall be considered material only if the utility's actual centerline location is more than three

(3) feet distant from the horizontal centerline location shown in that information, without regard to vertical location. Additional utilities may be present in the area.

The Design-Builder is responsible for obtaining all information that will be required to complete design and construction. The Design-Builder must coordinate and cooperate with other contractors that are expected to be relocating utilities during the construction of this Project.

Right of Way

Existing Plats along the corridor have been collected and provided on ProjectWise. Additionally, a right of way mosaic has been developed, the limits of which are from IS 495, including both spurs, to Middlebrook Road. The metes and bounds survey file for the Watkins Mill Interchange Project is also available on ProjectWise. All right of way has been cleared for the Watkins Mill Interchange Project.

Outside of the Watkins Mill Interchange Project, no proposed right of way needs have been identified, no plats have been generated, and no right of way has been cleared. The Design-Builder will be required to obtain all metes and bounds surveys required for the project, develop right of way needs, and generate all plats for approval by SHA necessary for completion of the project.

Permits

No permits have yet been obtained. Agency review and approval are required for regulated resource impacts. The Design-Builder shall deliver submittals for regulatory agencies approval to the Administration. Multiple permits may be associated with the project and shall be dependent upon the size, scope, sequence of construction, and exact locations of the proposed work. The Administration shall determine, based on the proposed work, the number of permits required.

The Design-Builder shall be responsible for addressing any comments or issues the regulatory agencies and/or Administration may have, including those pertaining to avoidance and minimization measures. The SHA is conducting an on-going search for potential mitigation sites should they be necessary. The Design-Builder shall be responsible for designing and implementing mitigation, if required. It is not the responsibility of, nor guaranteed by, the Administration that approval or authorization will be granted by the regulatory agencies.

Wetlands and waterways were identified and delineated along I-270 from the I-495 Split to Game Preserve Road. A copy of the delineation report will be made available on ProjectWise. The Design-Builder will be responsible for supplemental delineations.

Traffic

The Administration has developed an existing VISSIM traffic model for the 2015 and 2040 no-build design years. The model is fully calibrated and available to the Design-Builder on ProjectWise. Concept Evaluation Templates depicting VISSIM traffic model results for the 2015 and 2040 no-build design years are available to the Design-

Builder on ProjectWise. Additionally, three-year crash data is included on ProjectWise.

Structures

An inventory of existing structures has been completed from I-495 to Watkins Mill Road and the report has been posted on ProjectWise. The report highlights structural-related concerns such as vertical clearance.

National Environmental Policy Act (NEPA)/Maryland Environmental Policy Act (MEPA)

Through discussions with FHWA, MEPA approval will be required for projects within this Contract utilizing state funds with no federal actions (i.e. IAPA or design exception). NEPA approval will be required for projects within this Contract should there be a federal action.

Preliminary coordination has been initiated with resource regulatory agencies (MD Department of Natural Resources (DNR) and US Fish and Wildlife Service) to identify potential rare, threatened and endangered species, and with SHA's Cultural Resources to identify potential historic and/or archeological sites. The Design-Builder will need to coordinate closely with the SHA Environmental Manager for updated agency coordination once defined project limits and limits of disturbance have been developed.

Coordination with parks departments has not been initiated. Department of Natural Resources-managed land (Seneca Creek State Park) is within the contract limits.

Forest Interior Dwelling Species (FIDS) habitat is within the contract limits.

Coordination with Montgomery County regarding Special Protection Areas (SPAs) has not been initiated.

Coordination with emergency services and schools has not been initiated.

Noise

Existing noise models have been developed from IS 495 to north of the Watkins Mill Interchange project, including both spurs. Depending on the proposed improvements and SHA's noise policy, noise analyses may be required along certain stretches of the project.

A noise analysis was completed for the Watkins Mill Interchange Project and the report has been provided on ProjectWise. The noise barrier for the Parklands at Watkins Mill Town Center development was not warranted due to the development's building permits being issued after the date of public knowledge. Note, the ICM contract has no date of public knowledge as of yet.

F. Scope of Services / Description of Work

1. Services by the Design-Builder

The required engineering and pre-construction services to be provided by the Design-Builder will include, but not be limited to:

- General Coordination with the Administration.
- Additional Data Collection as needed to complete the project(s), including, but not limited to, topographic surveys, utility designations, right-of-way mosaics, metes & bounds surveys, soil borings, test pits, environmental features delineations, ambient noise measurements, traffic counts, etc., and providing necessary MOT to perform the data collection activities.
- Coordinate with SHA throughout the design and preconstruction and phase through a combination of on-site meetings, partnering and design meetings, conference calls, and workshops and prepare agendas, meeting minutes and action item lists for that coordination.
- Perform project(s) site visits and inspections as needed
- Develop the OPCC on the designs at the completion of any agreed upon Milestone.
- Develop and document a Contracting Plan to meet DBE contract goals on all Construction phases
- Develop and maintain design schedule
- Develop, update, and revise preliminary Construction schedule
- Identify project(s) risks and mitigation measures, and develop a Risk Management Plan, perform risk assessments, and prepare and update a Risk Register
- Develop a Design Quality Control Plan, a construction Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan
- Development of Construction cost model and attendance in review meetings
- Develop and calculate quantities.
- Develop DBE and Subcontractor plan
- Develop OPCC estimates at each milestone and attend reconciliation meetings
- Notify SHA at what point CAP proposals can be prepared
- Prepare and submit CAP proposals.
- Provide cost model and assumptions.
- Reconcile Final CAP for the project(s)
- Identify materials that could be procured by the Administration or the Contractor ahead of any Construction Phase
- 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 at the completion of any agreed upon Milestone.
- Development of project(s) plans and specifications
- Roadway design as required for the project(s)
- Preparation of an IAPA, if required for the project(s)

- Develop any Right-of-way needs for the project(s)
- Preparation of any Design Exceptions as required for the project(s)
- Design of any surface drainage conveyances, stormwater management, and erosion and sediment control and obtain any related environmental agency approvals required for the project(s) (including NPDES and MDE Approvals).
- Hydrologic and Hydraulic analyses, Drainage and Storm Water Management (SWM) Analyses, Design, and Approvals.
- Closed-Circuit Television (CCTV) inspections of existing drainage pipes as needed.
- The pavement engineering for the Project shall include, but is not limited to, the pavement investigation, pavement type selection, new pavement design, pavement rehabilitation design, and material selection.
- Perform pavement and subsurface geotechnical investigations needed to determine subsurface features and characteristics, and properties to support pavement and geotechnical engineering functions.
- Analyze pavement performance data and existing material conditions to determine the structural and functional conditions for the development of pavement engineering recommendations;
- Analyze subsurface geotechnical field and laboratory test data to determine existing soil, rock, and groundwater conditions etc. for the development of geotechnical engineering recommendations;
- Structural design for all bridges, culverts, walls and any and all other incidental structures required for the project(s).
- Traffic engineering design of any temporary and permanent signing, lighting, traffic signals, pavement markings, and Intelligent transportation systems (ITS) required for the project(s)
- Traffic Operations Analyses including the preparation of a Traffic Operations Analysis Report
- Temporary Traffic Control Design and Implementation including the preparation of a Traffic Management Plan (TMP), red flag summary, Maintenance of Traffic Alternatives Analysis (MOTAA). Additionally, attending and running TMP meetings.
- HOV equivalency analysis and submit to FHWA for approval, if required
- Safety analysis using the Highway Safety Manual (HSM) and submit to FHWA for approval, if required
- Landscape Architecture design of any roadside landscaping and stormwater management landscaping required for the project(s)
- Forest Impact Analysis, Significant tree identification, development of forest impact plans, tree preservation plan and design of any reforestation mitigation required for the project(s)
- Preparation of any necessary documents to obtain final reforestation site review approval from the Maryland Department of Natural Resources
- Complete all work related to providing a noise study(ies) that makes a final determination on reasonableness and feasibility related to noise abatement.
- Prepare and coordinate the Joint Permit Application(s) (JPA) including but not limited to preparation and submittal of the JPA application(s) to SHA with attachments including location map, impact plates, trilogy request and

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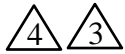
responses, response to MDE's 45-day comments, a copy of the approved E&S plans, and obtaining MDE and USACE approval(s)

- Preparation of an Avoidance, minimization and Mitigation report for the JPA, if necessary
- Obtain approval of all compensatory mitigation, if necessary
- Design compensatory mitigation site(s), if required to meet permit conditions
- Development of any wetland mitigation and stream restoration, required to meet permit conditions
- Develop supplemental wetland delineation report(s), required to meet permit conditions
- Utility Coordination for utility modifications whether designed and/or constructed by the Design-Builder.
- Development of utility conflict matrix to track potential conflicts the design may have with existing utilities.
- Development of plats for all required Right-of-way acquisitions.
- Participate with SHA in a public outreach program (including adjacent property owners and the general public) including but not limited to providing staff for meetings and public outreach forums as needed, and prepare and provide displays, printed materials (including but not limited flier, newsletter, and brochures) project(s) photos, renderings and other materials as necessary in support of the public outreach program.
- Produce Required Deliverables
- Any other items required to successfully complete the project.
- The Design-Builder shall provide Aconex project management software with unlimited access for the duration of this contract. This software will be utilized by all parties for document management, collaboration, and project management on this contract.

2. Services to be provided by the Administration

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

- Provide CADD standards, engineering standards, design criteria, as-built plans, existing R/W plats and prints of other design projects for use as examples or guides.
- Provide erosion and sediment control standard sheets, traffic design standard details, Maintenance of Traffic (MOT) standard plates, etc.
- Provide SHA management and liaison services related to project(s)
- Coordinate times and places, attendance and participation in all of the Design-Builder's team, community, public and other miscellaneous meetings
- Provide existing Right-of-Way plats and/or Right-of-Entry agreements.
- Identify project risks and mitigation measures
- Environmental Document preparation
- Analysis of project and Construction phasing including determination of acceptability of severable Construction packages
- Provide input into preliminary Construction schedule



- Acquisition of Environmental Permits
- Acquisition of Right-of-Way
- Review Construction CAP proposals and compare to ICE
- Reconcile Final CAP for each phase
- Construction Management and Inspection Services
- Design required noise abatement

Scope Validation and Identification of Scope Issues

A Scope Validation Period of 120 days from the date of the Notice to Proceed for Design and Preconstruction Services will be provided on this contract. During the Scope Validation Period, the Design-Builder shall thoroughly verify and validate that the Design-Builder's understanding of the scope of work and its ability to complete it within the Design and Preconstruction Services Fee. Any Scope Issues determined during this period shall not be deemed to include items that the Design-Builder should have reasonably discovered prior to submission of its Technical Proposal.

If the Design-Builder intends to seek an adjustment to the Design and Preconstruction Fee due to a Scope Issue, it shall promptly, but in no event later than the expiration of the Scope Validation Period, provide the Administration in writing with a notice of the existence of such Scope Issue and basis for such Scope Issue. Within 30 days of the notice, the Design-Builder shall provide documentation that specifically explains its support for the Scope Issue, which shall include among other things: (a) the assumptions the Design-Builder made during the preparation of its Proposal that form the basis of its allegation, along with documentation verifying it made such assumptions in developing its Proposal; (b) explanation of the Scope Issue that the Design-Builder could not have reasonably identified prior to submission of the Technical Proposal; (c) specific impact on the Design and Preconstruction Services. For the avoidance of doubt: (1) The Design-Builder shall not be entitled to raise any Scope Issues that were not previously addressed with a notice; and (2) Design-Builder shall have no right to seek any relief for any Scope Issues not identified in a notice provided to the Administration during the Scope Validation Period.

Within a reasonable time after the Administration's receipt of the documentation, the parties shall meet and confer to discuss the resolution of such Scope Issues. If the Administration agrees that the Design-Builder has identified a valid Scope Issue, a change order will be executed to increase the value of the Design and Preconstruction Fee; however, the Construction Services will be adjusted to retain the overall fixed value of the contract. Notwithstanding anything to the contrary in the Contract Documents or a matter of law, the Design-Builder shall have the burden of proving that the alleged Scope Issue could not have reasonably been identified prior to the submission of the Technical Proposal and such Scope Issue materially impacts its Design and Preconstruction Services Fee.

The parties acknowledge that the purpose of the Scope Validation Period is to enable the Design-Builder to identify those Scope Issues that could not have reasonably been identified prior to the submission of the Technical Proposal. By submission of the Technical Proposal, the Design-Builder acknowledges that the Scope Validation Period is a reasonable time to enable the Design-Builder to identify Scope Issues that materially impacts its Design and Preconstruction Fee. The Design-Builder will assume and accept all risks to complete the Design and

Preconstruction Services at the conclusion of the Scope Validation Period without any change in the fee absent any change to the Contract requirements after the completion of the Scope Validation Period.

II. REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSALS PACKAGE

The following materials are being provided to all prospective Proposers:

A. Request for Qualifications/Request for Proposals.

The following materials are being provided in electronic format on ProjectWise. This material is considered Engineering Data and the Administration will stand behind its accuracy unless otherwise specified in the contract documents.

B. Survey/Topographic Files

- 10-Scale Mapping
- Environmental Features Files

C. Utility Files

- Utility designation files
- Test Hole Locations
- Test Hole Data

D. Right-of-Way

- Existing Right-of-Way workmap for Watkins Mill
- Proposed plats for Watkins Mill
- Existing plats

E. Appendices

- Soil Survey
- Existing Traffic Counts
- VISSIM Traffic Models
- Existing Crash Data
- Existing Noise Models
- Wetland Delineations
- Watkins Mill Noise Analysis

- Watkins Mill IAPA and Permits

F. Watkins Mill Interchange Plans

G. Watkins Mill Interchange Design Files

The following materials are being provided in electronic format on Projectwise. The Administration makes no representation regarding its accuracy.

H. Additional Material

- 100-Scale Mapping
- Existing Right-of-Way mosaic file
- Inventory of Existing Structures
- Utility plans and/or as-builts
- As-builts
- ITS Information



The following materials are being provided in electronic format on Projectwise, unless otherwise noted. This material is considered necessary for the Design-Build Team to submit a technical proposal and prepare a bid.

I. I-270 Concept Evaluation Templates

J. Manuals and Guidance

- VISSIM Modeling Techniques
- Manual for the Inspection of Highway Right of Way in Karst Areas

In general, the Microstation files included on the ProjectWise are in conformance with the MDSHA Microstation V8 CAD Standards Manual.

It is likely that most Proposers will use plot drivers that differ from the drivers used to produce the provided plans. Some of the drawings screen existing features through level symbology color 250. The manipulation of the drawing files to produce any requirements (as found elsewhere in the RFP) for as-built plans will be the responsibility of the selected Design-Builder.

Proposers are also provided with a file index provided on ProjectWise. The file is a Word Document describing all the files and files names as outlined above.

III. 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 SOQ, 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 (e-mail), 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 Department of Administration only through the Procurement Officer and only in letter format via e-mail and not orally. The Proposer's contacts with the Department of Administration will be only through a single representative authorized to bind the Proposer.
3. The Procurement Officer normally will contact a Proposer in writing through the Proposer's designated representative.
4. Neither a Proposer nor its agents may contact Department of Administration employees, including Department of Administration heads, members of the evaluation committee(s) and any other person who will evaluate SOQs, 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.

IV. COMMUNICATIONS DURING PROCUREMENT

A. Request for Qualifications Phase Communications

1. Proposer Questions

The Administration will consider questions submitted in writing by Proposers regarding the RFQ or additionally supplied information, including requests for clarification and requests to correct errors. Project questions shall be submitted in letter format via e-mail with return confirmation receipt.

No verbal requests or personal visits will be honored. All written contacts shall be addressed to the **Procurement Officer**:

Mr. Jason A. Ridgway
Director, Office of Highway Development
State Highway Administration

e-mail address: MO069_IS_270@sha.state.md.us

Only e-mailed inquiries will be accepted. No requests for additional information or clarification to any other Administration office, consultant, or employee will be considered.

Only requests received by 4:00 p.m. Eastern Time on the date specified in **Section XXVII** 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, e-mail address, and the Proposer he/she represents.

A response to questions will be issued without attribution. Multiple responses are anticipated. The last response will be posted not later than 5 calendar days prior to the Statement of Qualifications (SOQ) due date.

2. Addenda

The Administration will issue addenda to modify conditions or requirements of this RFQ and to answer questions on the RFQ. Addenda will be disseminated only by posting on eMaryland Marketplace.

B. Request for Proposals Phase Communications

1. Proposer Questions

All requests for additional information or clarification of the RFP and any other communication concerning this Project shall be submitted via e-mailed with return confirmation receipt. No verbal requests or personal visits will be honored. All written contacts shall be addressed to:

Mr. Jason A. Ridgway
Director, Office of Highway Development
State Highway Administration
e-mail address: MO069_IS_270@sha.state.md.us

Only e-mailed inquiries will be accepted. No requests for additional information or clarification to any other Administration office, consultant, or employee will be considered. Responses to all RFI's not part of an addendum, will be provided through email to the reduced candidates list (RCL) and shall be considered contractually binding. Each Proposer must acknowledge receipt of the e-mail communication. The Administration may rephrase questions as it deems appropriate and may consolidate similar questions. Multiple responses are anticipated. The last response will be posted not later than 7 days prior to the Proposal due date. The Administration will provide a comprehensive list of questions and answers to the Reduced Candidate List 7 days prior to the proposal due date

Only requests received by 4:00 p.m. Eastern Time on the date specified in **Section XXVII**, will be addressed unless the Administration determines it is in its best interest. Questions will not be accepted by phone. Questions, only from the primary or secondary contact, must include the requestor's name, telephone number, e-mail address, and the Proposer he/she represents.

2. Addenda

Interpretations, clarifications or modifications to this RFP will be made by Addenda. Only interpretations, clarifications and answers to the questions included in Addenda or such writings shall be binding on the Administration. Addenda will only be distributed via email to those on the RCL.

V. COSTS AND STIPENDS

A. Request for Qualifications Phase

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

B. Request for Proposals Phase

The Administration understands that firms invited to submit Technical and Price Proposals on Design-Build projects may incur higher than normal preparation costs in their engineering effort to submit responsive proposals for the project. Such efforts are likely to involve geotechnical investigations, development of horizontal and vertical geometry, development of concept design plans, cross sections, field surveys, stormwater management investigation, preliminary storm drain design, and development of extensive design details to prepare and submit a proposal.

A stipend in the amount of \$750,000.00 will be paid to each Proposer meeting at least one of the following terms and conditions:

- A) Its Proposal (including any BAFO) has achieved a rating of Pass on all "Pass/Fail" evaluation factors and an overall qualitative rating of at least "ACCEPTABLE --" for all technical factors; or
- B) Its Proposal (including any BAFO) was not selected for award or it was awarded the Contract but the Contract was terminated prior to issuance of a notice to proceed for the Administration's convenience.

A stipend in the amount of \$750,000.00 may be paid to a Proposer not meeting either of the above conditions if the Proposer has a Proposed Technical Concept (PTC) the Administration wishes to utilize in the final design.

Those firms invited to submit Technical and Price Proposals will be required to sign a contract with the Administration for payment of the stipend in exchange for electronic

copy and hard copy of all documents used to develop the Technical and Price Proposal. The firm submitting the Proposal considered the most advantageous to the State shall not be eligible to receive the stipend.

In payment for the services covered by this Agreement, the Design-Builder agrees that all materials, electronic files, marked up drawings, cross sections, quantity lists and other material used in the development and submission of the Technical and Price Proposal will become the property of the Administration and may be used in any manner at their discretion without any additional compensation to the Design-Builder. If the Design-Builder does not wish to accept the stipend, the Administration will not use the Technical and Price Proposal in any manner.

Three completed, signed originals of the Stipend Agreement must be submitted to Mr. Jason A. Ridgway, Director, Office of Highway Development, in the time frame outlined in the Stipend Agreement, Section 2.2(a).

One original invoice signed (in blue ink) and two copies along with supporting engineering materials noted above must be submitted to Mr. Jason A. Ridgway, Director, Office of Highway Development, in the time frame outlined in the Stipend Agreement, Section 2.3.

As noted in the Stipend Agreement, Section 2.3, Invoices and supporting engineering work for stipend payment shall not be submitted until notification from SHA that the contract has been awarded or there has been a cancellation of the procurement. Invoices must be received within 30 days of said notification by SHA to be honored for payment. Invoices received prior to notification from SHA will not be processed for payment.

Invoices shall contain the following information:

Date -

Invoice # - created by the Design-Builder

Bill To: Maryland State Highway Administration
707 N. Calvert Street
Baltimore, MD 21202

Federal Tax I.D. number

Remittance Address

FMIS # - MO069A51

Contract Description – IS 270 – Innovative Congestion Management Contract

Construction # - MO0695172

Payment Amount - \$750,000.00

Description of Work: Payment for Design-Builder to perform preliminary design work to prepare a proposal for contract

VI. SUBSTITUTIONS

Proposers are advised that, in order for a Proposer to remain qualified to submit a Technical and Price Proposal after it has been placed on the Reduced Candidate List, its organization and Key Staff personnel identified in the SOQ, must remain intact for the duration of the procurement process. A Proposer may propose substitutions for participants after the SOQ submittal; however, replacement personnel must have equal or better qualifications than the personnel identified in the SOQ and such changes will require written approval by the Administration. Approval may be granted or withheld at the Administration's sole discretion. Requests for changes must be made in writing no later than thirty (30) calendar days prior to the due date for submittal of Technical Proposals. The Proposer should carefully consider the make-up of its team, prior to submittal of the SOQ, to reduce the likelihood of occurrence of any such changes during the Proposal period and thereafter throughout the term of the Contract.

VII. COMPLIANCE WITH APPLICABLE LAWS

In connection with this RFQ/RFP and the Contract, Proposers will comply with all applicable laws and regulations in all aspects in connection with the procurement process of this project and in the performance of the Contract.

VIII. DISADVANTAGED 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 a SOQ in response to this RFQ, an Offeror agrees that, if included on the Reduced Candidate List (RCL), it shall comply with the Disadvantaged Business Enterprise (DBE) provisions of the Contract included in the appendix. 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 RFQ, the terms DBE and MBE have the same meaning.

Each Proposer on the RCL 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. As part of the response to the RFP, DBE participation meeting or

exceeding the contract goal in the appendix will only be required for the Design and Preconstruction Fee.

A separate contract goal will be set for each CAP. Sufficient good faith efforts to meet the goal shall be a condition of acceptance of each CAP. 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.

IX. ORGANIZATIONAL CONFLICTS OF INTEREST

The Proposer's attention is directed to 23 CFR Section 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

The Proposer is prohibited from receiving any advice or discussing any aspect relating to the project or the procurement of the Contract with any Person with an organizational conflict of interest, including, but not limited to, the Persons identified in Section X.

By submitting its SOQ, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Administration that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Administration may, at its discretion, cancel the Contract. If the Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the Administration, the Administration may terminate the Contract for default.

X. RESTRICTIONS ON PARTICIPATION IN DESIGN-BUILD CONTRACTS

An individual or entity that has received monetary compensation as the lead or prime design consultant under a contract with the Administration to develop the concept plan and/or have been retained to perform construction phase services on behalf of the state, or a person or entity that employs such an individual or entity, or regardless of design phase responsibilities has received in excess of \$500,000 for services performed, may not submit a Technical Proposal or a Price Proposal for this procurement and is not a

responsible offeror under COMAR 21.06.01.01. The Technical Proposal or Price Proposal from such an individual or entity will be rejected pursuant to COMAR 21.06.01.01 and COMAR 21.06.02.03.

The following is a list of consultants and/or subconsultants that have received monetary compensation under a contract with the Administration as the prime consultant to develop the concept plan, have been retained by the Administration to perform construction phase services on the behalf of the state for this procurement, or has received payment in excess of \$500,000. SHA makes no representations regarding the completeness of the list:

- Whitman, Requardt & Associates
- McCormick Taylor
- Wallace Montgomery & Associates
- Applied Research Associates, Inc.
- The Wilson T. Ballard Company

§ 13-212.1 of the State Finance & Procurement Article that 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 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 Consultant or an entity that is a subcontractor on this contract.

No Design-Builder may use any persons meeting the above restrictions in any capacity, key staff or otherwise, on this Design-Build Contract. It is the responsibility of the Design-Builder 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 Design-Builder 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. REQUEST FOR QUALIFICATIONS (RFQ)

A. Design-Builder Selection and Award Process

Those Design-Builders that respond to this RFQ and meet all respects of the conditions for this request shall be evaluated. The purpose of the evaluation will be to determine past performance, experience and capabilities of Design-Builders to undertake this project plus their overall understanding of the project. The factors which will be used to evaluate the Statement of Qualifications (SOQ) have been described herein.

The Administration will assemble Evaluation Teams and an Evaluation Committee consisting of key staff from appropriate offices within the Administration. The Evaluation Teams and Evaluation Committee will review the SOQ to verify that all requirements of the RFQ have been met, and to evaluate the SOQ based on the evaluation factors.

Each SOQ 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 SOQ in its entirety. Each Leader of the Evaluation Team will be part of the Evaluation Committee with other appropriate key staff. This Evaluation Committee will review each Evaluation Factor and determine an overall Technical Rating for each SOQ.

Once the SOQ evaluations are completed, a reduced candidate list (RCL) of those Design-Builders considered most highly qualified shall be developed. The RCL will be determined based on an evaluation of the factors set forth herein. In order to be eligible for evaluation, SOQs submitted in response to this RFQ must include a response to each pass/fail and technical evaluation factor. If there is sufficient interest by qualified Design-Builders and the Administration is satisfied that there will be an acceptable level of response, then the Administration will request in writing the RCL to submit a Technical and Price Proposal as outlined in this document.

Those Design-Builders that do not make the RCL shall be notified in writing and will be provided the opportunity for a debriefing.

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

B. Overview of SOQ Submission

Parties interested in being considered for award of this Design-Build Contract with the Administration shall submit a SOQ, alone or with others, as the Design-Builder. The Design-Builder may also include other parties as subconsultants, subcontractors and suppliers in their SOQ submittal that they are committing at this time. At least the key participants of the Design Team and Construction Team must be included at this time.

This Section describes the following items:

- The information items to be included in the SOQ
- Evaluation factors to be utilized by the Administration with respect to such information items
- The selection approach that the Administration will utilize for SOQ submittals

The objective of the RFQ step of the procurement is to create a Reduced Candidate List of the most highly qualified Proposers with the general capability, capacity and experience necessary to successfully undertake and complete the Work. The Design-Builder will have primary responsibility to plan, design, manage, and control, the project and to complete the project on or ahead of schedule. The Administration has set high responsibility standards for the Design-Builder that are reflected in the technical evaluation factors of this RFQ and will be reflected in the RFP and the Contract.

C. Evaluation Factors for the RFQ/SOQ

Pass/Fail Factors

- The SOQ is complete and does not deviate from the RFQ requirements in any material respect.

The Administration may allow certain deficiencies in the SOQs relating to the above factor to be corrected through clarifications, as described below, but shall have no obligation to do so.

SOQ Technical Evaluation Factors:

- Key Staff Experience and Qualifications
- Project Understanding and Progressive Design-Build Approach
- Design-Build Team's Ability and/or Experience

The ratings assigned to the technical evaluation factors will be compiled to determine an overall quality rating for the SOQ. The ratings of each of the technical evaluation factors and the overall technical rating for the SOQ will be through a consensus process.

Numerical scores will not be assigned.

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.

Quality ratings for each technical evaluation factor and the overall technical rating for the SOQ will be based on the following quality rating criteria:

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 which 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.

The evaluators may also use a plus (+) or minus (-) suffix to further differentiate the strengths or limitations within a technical ratings of **EXCEPTIONAL**, **GOOD**, and **ACCEPTABLE**.

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.

Any SOQ that receives an overall rating of **UNACCEPTABLE** in one or more technical evaluation factors will receive an overall SOQ rating of **UNACCEPTABLE** and the Proposer will not be included in the RCL.

D. Request for Clarification

The Proposer shall provide accurate and complete information to the Administration. If information is not complete, the Administration will either declare the SOQ unacceptable or notify the Proposer, who may be allowed to participate further in the procurement of this project if all information required is provided within the timeframe established by the

Administration. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the Administration with notations of the insufficiencies or omissions and with a request for clarifications and/or submittal of corrected, supplemental or missing documents. If a response is not provided, the SOQ may be declared unacceptable. The Administration may waive technical irregularities in the form of the SOQ of the Proposer that do not alter the quality or quantity of the information provided.

The Administration may, at its sole discretion, request clarifications and/or supplemental information from a Proposer regarding its SOQ, at any time prior to finalizing the Reduced Candidate List. All clarification requests and responses shall be in letter format in writing by e-mail. Responses shall be limited to answering the specific information requested by the Administration.

Proposers' e-mail follow-up responses to inquiries by the Administration shall be submitted to the address indicated below or as otherwise specified in writing by the Administration. Responses shall be submitted to:

Mr. Jason A. Ridgway
Director, Office of Highway Development
Maryland State Highway Administration
e-mail address: MO069_IS_270@sha.state.md.us

E. Determination of the Reduced Candidate List

The Administration will establish a Reduced Candidate List (RCL). Based on evaluation of the SOQs, the RCL will consist of the most highly qualified Proposers. The unsuccessful teams shall be notified in writing and provided an opportunity for a debriefing.

F. Challenges

The decision of the Administration on the Reduced Candidates List and the subsequent award of the Contract shall be final and shall not be appealable, reviewable, or reopened in any way, except as provided in Section XI. I. of this RFQ. Persons participating in the RFQ phase of this procurement shall be deemed to have accepted this condition and the other requirements of this RFQ.

G. Contents for SOQ Submission

1. Cover Letter (Limit 2 Pages)

The cover letter includes mandatory information requirements. The Cover Letter will not be part of the evaluations.

The cover letter must be addressed to the Procurement Officer:

Mr. Jason A. Ridgway
Director, Office of Highway Development

The SOQ submittal cover letter must be signed by individual(s) authorized to represent the Major Participant firm(s). A Major Participant is defined as the legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory to the Design-Build Contract with the Administration. Major Participant(s) will be expected to accept joint and several liabilities for performance of the Design-Build Contract. Major Participants are not design subconsultants, construction subcontractors or any other subcontractors to the legal entity that signs the Design-Build Contract.

If the Design-Build contracting entity will be a joint venture, or some other entity involving multiple firms, all Major Participant firms involved must have an authorized representative sign the cover letter.

The cover letter shall include the following:

- a. Names, main role and license or certification information of all Major Participant firms and the Lead Construction and Lead Design Firms if not a Major Participant firm, and other firms that are now being committed to the Design-Builder. You must include at least your Lead Design Firm and your Lead Construction Firm in the Design-Builder at this time.
- b. The primary and secondary individual contacts for the Major Participant firm(s) with address, phone number, and E-mail address where all communications from the Administration should be directed for this RFQ phase.
- c. An affirmative declaration that indicates to the best knowledge and belief of each Major Participant Firm, including the Lead Design Firm if not a Major Participant firm, the information supplied in the SOQ is true and accurate.
- d. A declaration that each Major Participant firm(s) and the Lead Design and Lead Construction Firm, if not a Major Participant firm, are prepared to provide the necessary financial, material, equipment, labor and staff resources to perform the project.
- e. A declaration by the Major Participants that signatories are affirming their intent to enter into a legal organization that shall constitute the Design-Builder.
- f. A certification that the Design-Builder 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.
- g. A general authorization for the Administration to confirm all information contained in the SOQ submittal with third parties, and indicate limitations, if any, to such authorization.
- h. A declaration that no portions of the SOQ Technical Evaluation Factor sections 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.

- i. 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 addenda. The Proposer is solely responsible to ensure that their team has the correct information.

2. Key Staff Experience and Qualifications (Page limits by subsection) – SIGNIFICANT

i. Design Key Staff (Limit 10 pages) – CRITICAL

The Design-Builder must provide resumes that demonstrate their relevant project experience with detailed descriptions. Relevant experience should demonstrate the staff's ability to be successful in achieving the goals of this contract. Information that is not detailed or relevant will be considered unacceptable. The information for each Key Staff member shall be relevant to the role and function they will perform on this project. The resumes for Key Staff must identify the function the staff member will fulfill on this project and include their role or function on relevant projects. The Administration recommends that the primary and secondary contacts are key staff members.

- Project Design Manager – Shall be a registered Professional Engineer with a minimum of fifteen (15) years of experience. Demonstrate relevant experience in managing design for projects addressing goals similar to this contract. Emphasize relevant Design-Build experience.

While the Project Design Manager is not required to be a Maryland registered Professional Engineer at the time of submission of the SOQ, evidence of a Maryland PE license must be provided on or before the due date of the submission of the Technical Proposal.

- Highway Engineer – Shall be a registered Professional Engineer with a minimum of ten (10) years of experience. Demonstrate relevant experience related to highway geometric design and design requirements for projects addressing goals similar to this contract.
- Traffic Engineer – Shall be a registered Professional Engineer and a Professional Traffic Operations Engineer with a minimum of fifteen (15) years of experience. Demonstrate relevant experience related to traffic analysis (including computer traffic simulation and optimization models) for projects addressing goals similar to this contract.
- Environmental Compliance Manager – Shall have a minimum of ten (10) years of experience. Demonstrate relevant experience related to natural, cultural and socioeconomic resources inventories (including GIS desktop

inventory and natural resource field delineation); development of MEPA/NEPA environmental documentation and associated technical reports (such as air quality, noise and Section 4(f) Evaluations); coordination with federal, state and local permitting/approval agencies; development of permit application packages; design/coordination of environmental features mitigation and developing/monitoring environmental commitments for projects.

- An additional Design Key Staff position that the Proposer considers as key to meeting or exceeding the Goals.

There is no page limitation for each resume. Any required licensure, years of experience, or educational requirement required will not be factored into the quality rating for each Key Staff; however, any Key Staff not meeting these requirements will automatically receive an **UNACCEPTABLE** rating.

ii. Construction Key Staff (Limit 8 pages) – IMPORTANT

The Design-Builder must provide resumes that demonstrate their relevant experience on projects with detailed descriptions. Relevant experience should demonstrate the staff's ability to be successful in achieving the goals of this contract. Information that is not detailed or relevant will be considered unacceptable. The information for each Key Staff member shall be relevant to the role and function they will perform on this project. The resumes for Key Staff must identify the function the staff member will fulfill on this project and include their role or function on relevant projects. The Administration recommends that the primary and secondary contacts are key staff members.

- Design-Build Project Manager – Shall have a minimum of fifteen (15) years of experience. Demonstrate experience in the preconstruction, construction and project management of highway construction relevant to this contract. Emphasize relevant Design-Build or CMAR experience.
- Construction Manager – Shall have a minimum of ten (10) years of experience. Demonstrate experience in preconstruction, managing construction activities, managing schedules and coordination of highway construction projects relevant to this contract.
- Cost Estimator – This position shall have a minimum of ten (10) years of experience. This position will be involved during OPCCs, CAPs, and at key meetings where price, risk, and assumptions are discussed. Demonstrate cost estimating experience which would be relevant to this contract.
- An additional Construction Key Staff position that the Proposer considers as key to meeting or exceeding the Goals.

There is no page limitation for each resume. Any required licensure, years of experience, or educational requirement required will not be factored into the

quality rating for each Key Staff; however, any Key Staff not meeting these requirements will automatically receive an **UNACCEPTABLE** rating.

3. Project Understanding and Progressive Design-Build Approach (Limit 8 Pages) – IMPORTANT

- i.** Provide a narrative describing the Design-Builder’s understanding of the Project Goals. List and briefly describe the significant issues and risks facing the selected Design-Builder and the Administration. – **CRITICAL**
- ii.** Provide a narrative describing the Design-Builder’s approach to Progressive Design-Build and how it will build a professional, collaborative, and integrated project team and partner with the SHA and other stakeholders during project development. – **CRITICAL**
- iii.** Provide a description of the composition of the Design-Builder. If the Design-Builder is a joint venture or association, indicate specific responsibilities of each member and firm of the team. Include a separate graphical organizational structure chart, complete with working titles for the Design-Builder in both the Design and Construction phases, and showing lines of communication. The chart shall reflect all Key Staff indicated in this RFQ and the number of hours per week the staff will be dedicated to this contract during the Design and during the Construction. The chart may be submitted on an 11” x 17” page. – **IMPORTANT**

4. Design-Build Teams Ability and/or Experience (Limit 16 pages) – CRITICAL

- i.** Demonstrate the Design-Build Team’s Ability and/or Experience to be successful in delivering solutions to best meet or exceed the Goals of this contract.

H. SOQ Submission Requirements

One (1) original and nine (9) hard copies of the complete SOQ shall be submitted as specified in this Section. One (1) electronic copy PDF file on a CD or flash drive shall also be provided.

The SOQ shall match the organization as outlined in this RFQ to the maximum extent practicable. Each submittal shall conspicuously reference the RFQ section number corresponding to the submittal (e.g. Project Understanding and Progressive Design-Build Approach). The Design-Build Proposal shall be on 8½" x 11" pages using a minimum font size of 12 point, accompanied by finding tools, such as tables of contents and dividers to make the submittals easily usable.

The SOQ may be submitted in container(s) of the Design-Builder’s choice provided the material is neat, orderly, and incapable of inadvertent disassembly. SOQs shall be submitted and bound using a three (3) ring binder with all pages numbered consecutively.

Each container shall be clearly marked as follows:

Design-Builder's Name **Statement of Qualifications**

Contract NO. MO0695172

Container ____ of ____

The SOQ must be submitted no later than **July 25, 2016 prior to 12 noon.**
(prevailing local time). The SOQ must be delivered to the following location:

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

I. 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 SOQ Due Date is considered the closing date for receipt of initial proposals.

Any other protest shall be filled 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.

J. 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 RFQ. The Administration reserves the right, in its sole and absolute discretion, to:

1. Reject any or all SOQs;
2. Issue a new RFQ;
3. Cancel, modify, or withdraw the RFQ;
4. Issue addenda, supplements, and modifications to this RFQ;
5. Modify the RFQ process (with appropriate notice to Proposers);
6. Appoint an Evaluation Committee and Evaluation Teams to review SOQs,
7. Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in SOQs;
8. Revise and modify, at any time before the SOQ due date, the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Administration will circulate an addendum to all registered Proposers setting forth the changes to the evaluation criteria or methodology. The Administration may extend the SOQ 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 SOQs;
10. Waive weaknesses, informalities, and minor irregularities in SOQs;
11. Disqualify any team that changes its SOQ (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 an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based upon, but not limited to, the following:
 - i. Failure on the part of a Major Participant 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 Major Participant or Designer under previous contracts with the Administration (or State);

- iii. Unsatisfactory performance by the Proposer, a Major Participant, and/or Designer under previous contracts with the Administration (or State);
- iv. Issuance of a notice of debarment or suspension to the Proposer, a Major Participant and/or Designer;
- v. Submittal by the Proposer of more than one SOQ in response to this RFQ under the Proposer's own name or under a different name;
- vi. Existence of an organizational conflict of interest under or evidence of collusion in the preparation of a proposal or bid for any Administration design or construction contract by (a) the Proposer, Major Participant or Designer 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 or a Major Participant is responsible.

Administration Disclaimers:

The RFQ 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 SOQs or in anticipation of a Contract. By submitting an SOQ, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to any subsequent RFP 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 an SOQ in response to this RFQ, the Proposer is specifically acknowledging these disclaimers.

XII. REQUEST FOR PROPOSALS (RFP)

A. Proposal Submission Requirements

1. Responsibilities of the Proposers

i. Review of RFP and Additional Information

Before submitting a proposal, the Prospective Proposer is responsible for examining the RFP and Additional Information furnished to each Prospective Proposer. The Prospective Proposer is responsible for all site investigation and preliminary design necessary to submit proposals and accept responsibility that their Technical Proposal and Price Proposal is sufficient to complete all proposed design and construction.

ii. 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.

2. Pre-Submittal Requirements

i. Mandatory One-On-One Meetings

The Administration will require mandatory one-on-one meetings with the Reduced Candidate List (RCL). The purpose of these meetings will be to discuss issues and clarifications regarding the RFP and/or the Proposer's Proposed Technical Concept (PTC) submittals. The Administration reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent the Administration determines that, in its sole discretion, such disclosure would impair the confidentiality of a PTC or would reveal a Proposer's confidential business strategies. Each meeting will be held independently with each Prospective Proposer on the RCL.

The one-on-one meetings are subject to the following:

- a. The meetings are intended to provide Proposers with a better understanding of the RFP.
- b. The Administration will not discuss any Proposal or PTC with any Proposer other than its own.
- c. Proposers are not permitted to seek to obtain commitments from the Administration in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- d. No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

The Administration reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings which require addenda to the RFP. The Administration, however, will not disclose any information pertaining to an individual Proposer's Proposal, PTCs, or other technical concepts to other Proposers.

ii. Letter of Interest

A Letter of Interest (LOI), on official letterhead of the Design-Builder, notifying the Administration whether or not the Design-Builder intends to submit a Technical and Price Proposal must be delivered no later than **December 15, 2016 prior to 12 noon** (EST). The LOI must be delivered to the following email address:

MO069_IS_270@sha.state.md.us

The LOI must be signed by individual(s) authorized to represent the Major Participant firm(s) and the lead Constructor firm(s). A Major Participant is defined as the legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory to the Design-Build Contract with the Administration. Major Participant(s) will be expected to accept joint and several liability for performance of the Design-Build Contract. Major Participants are not design subconsultants, construction subcontractors or any other subcontractors to the legal entity that signs the Design-Build Contract.

If the Design-Build contracting entity will be a joint venture, or some other entity involving multiple firms, all Major Participant firms involved must have an authorized representative sign the LOI.

iii. Proposed Technical Concepts Submittal and Review

Section iii through section vii sets the process for the submittal and review of Proposed Technical Concepts (PTC). The process is intended to:

- Allow Proposers to incorporate innovation and creativity into the Proposals.
- Allow the Administration to consider Proposer PTCs in making the selection decision.
- Avoid delays and potential conflicts in the design associated with deferring of reviews of PTCs to the post-award period.
- Obtain the best-value for the public.

The Proposer is also encouraged to submit standards or specifications that are approved for usage by other state Departments of Transportation as PTCs.



The Proposer may submit PTCs for review by the Administration on or before **November 17, 2016 prior to 12 noon**, (prevailing local time). Inquiries received after that date and time will not be accepted.

All PTCs shall be submitted in writing via email only to the project email address, with a cover letter clearly identifying the submittal as a request for review of a PTC. If the Proposer does not clearly designate its submittal as a PTC, the submission will not be treated as a PTC by the Administration

The Administration will review each PTC submitted to assess the implementation potential of the technical aspects of the concept and its compatibility with the project goals. The Administration will not approve PTCs but will return comments on the PTC on its implementation potential and its compatibility with the project goals. If the Administration needs more information, the Administration will submit written questions to the Proposer and/or request a one-on-one meeting in order to better understand the details of the PTC.

The Proposer shall advise the Administration in its PTC if it believes a one-on-one meeting is appropriate.

The Administration will return its comments or additional questions pertaining to any specific PTC no later than two weeks after receipt of that PTC.

The Proposer may re-submit the PTC for one additional review to the project specific email address. If a re-submittal is made, it shall be accompanied by a cover letter clearly identifying such submission as a PTC submitted for an additional review. Resubmission of a PTC will not entitle the Proposer to an extension of the Proposal due date.

iv. Content of PTC Submittal

Each PTC submittal shall include a sequential PTC number and shall include the following:

- A) Description: Detailed descriptive information and other appropriate information as appropriate such as conceptual drawings, production details, standards, specifications, and traffic operations analysis.
- B) Location: The locations where, and an explanation of how, the PTC will be used on the Project.
- C) Analysis justifying the use of the PTC including how it advances the project goals. .
- D) Potential Impacts: A preliminary analysis of potential impacts (both during and after construction) including but not limited to user impacts, Right-of-Way, geotechnical, utilities, environmental permitting, local community, safety, and life-cycle project and infrastructure costs, including impacts on the cost of repair, maintenance, and operation.
- E) Other projects: A description of other projects on which the PTC has been used, the degree of success or failure of such usage, and the names and contact information (including telephone numbers and e-mail addresses) of project owner representatives who can confirm such statements.
- F) Administration Risk: A description of risk to the Administration or third parties associated with implementing the PTC.
- G) Design-Builder Risk: A description of risk to the Design-Builder associated with implementing the PTC.
- H) Cost/Schedule Benefits: Discussion of any cost of schedule benefits to this contract from usage of this PTC.
- I) Miscellaneous: Any additional information that would assist the Administration in the review of this PTC.

v. Incorporation Into Proposal

Proposer may incorporate zero, one or more PTCs into its Proposal.

vi. PTC Confidentiality

PTCs properly submitted by a Proposer and all subsequent communications regarding its PTCs will be considered confidential. If a Proposer wishes to make any announcement or disclosure to third parties concerning any PTC, it shall first notify the Administration in writing of its intent to take such action, including details as to date and participants, and obtain the Administration's prior approval to do so.

vii. One-On-One Meetings

Prior to or after submission of PTCs, the Administration may conduct one-on-one meetings with a Proposer to gain information or a better understanding regarding its PTC and to discuss issues and clarifications regarding the PTC. The Administration reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings. However, the Administration will not disclose any information pertaining to an individual Proposer's PTCs or other technical concepts to other Proposers.

3. Proposal Delivery Formalities

i. 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 B. and a Price Proposal as described in Section XII C.

b. Technical Proposal

The Technical Proposal may be submitted in 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. MO0695172

Container ____ of ____

c. Price Proposal

The Price proposal shall be submitted on the Price Proposal Form supplied by the Administration and 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. MO0695172

Container ____ of ____

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



Technical Proposals and Price Proposals must be delivered no later than **January 19, 2017 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 eleven (11) 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.

f. Proposal Guaranty

The Proposal Guaranty shall be delivered with the Price Proposal in a sealed business-sized envelope clearly marked as follows:

Prospective Proposer's Name

Proposal Guaranty

IS 270 – Innovative Congestion Management Project

Contract No. MO0695172

4. Effect of Submitting Proposal

Signing of the Design-Build 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 Prospective proposer's agreement to all the provisions of the RFP and Contract governing requirements and procedures applicable through execution of the Design – Build Contract. **The Technical Proposal will become part of the Design – Build Contract.**

By so signing the above referenced terms and by delivering the Proposals, the Prospective 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) carefully examined all available reports and data related to subsurface conditions, (c) become familiar with all applicable federal, state and local laws and regulations, (d) 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 The PROPOSAL SUBMISSION REQUIREMENTS section above.
- c. The Proposer has determined that the RFP are generally sufficient to convey an understanding of all terms and conditions that could significantly impact the cost, timeliness, quality, or performance of the Work.

ii. 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.

iii. 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.

B. Technical Proposal

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 Design - Builder and the characteristics and benefits of the proposed solutions. The verbiage used in each Proposal will be interpreted and evaluated by the Administration based on the level of commitment provided by the Proposer. **No consideration will be given to tentative or ambiguous commitments.** For example, phrases containing “we may”, “we are considering”, “we could” or similar language will not be considered in the evaluation process because they do not indicate a firm commitment by the Design-Builder.

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

- Cover Letter
- Mobility
- Safety
- Operability/Maintainability/Adaptability
- Well-Managed Project
- Legal and Financial Information
- 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. An 11”-by-17” sheet will be considered only one page.
- Type Font and Margins. The type face 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.

1. Cover Letter

The cover letter includes mandatory information requirements. The Cover Letter will not be part of the evaluations.

The cover letter must be addressed to the Procurement Officer:

Mr. Jason A. Ridgway
Director, Office of Highway Development

The submittal cover letter must be signed by individual(s) authorized to represent the Major Participant firm(s) and the Lead Construction firm(s). A Major Participant is defined as the legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory

to the Design–Build Contract with the Administration. Major Participant(s) will be expected to accept joint and several liability for performance of the Design–Build Contract. Major Participants are not design subconsultants, construction subcontractors or any other subcontractors to the legal entity that signs the Design–Build Contract.

If the Design–Build contracting entity will be a joint venture, or some other entity involving multiple firms, all Major Participant firms involved must have an authorized representative sign the cover letter.

The cover letter shall include the following:

- a. Names, main role and license or certification information of all Major Participant firms and the Lead Construction and Design firms if not a Major Participant firm, and other firms that are now being committed to the Design–Builder. You must include at least your Lead Construction firm and your Lead Design firm in the Design–Builder at this time.
- b. The primary and secondary individual contacts for the Major Participant firm(s) with address, phone number, and E-mail address where all communications from the Administration should be directed for this RFP phase.
- c. Include an affirmative declaration that indicates to the best knowledge and belief of each Major Participant Firm, including the lead design firm if not a Major Participant firm, the information supplied in the Technical Proposal is true and accurate.
- d. Include a declaration that each Major Participant firm(s) and the Lead Design and Lead Construction firm, if not a Major Participant firm, are prepared to provide the necessary financial, material, equipment, labor and staff resources to perform the project.
- e. Include a declaration by the Major Participants that signatories are affirming their intent to enter into a legal organization that shall constitute the Design-Builder.
- f. Include a certification that the Design-Builder is in compliance with 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.
- g. Include a declaration that no portions of the Technical Evaluation Factor sections 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 considers confidential, proprietary information or trade secrets and provide justification why such materials, upon request, should not be disclosed after award of the contract.

Proposer is alerted to their responsibility to confirm that all team members have received addenda. The Proposer is solely responsible to ensure that their team has the correct information.

- i. Statement including the proposed legal structure of the Design–Builder.
- j. Include a general authorization for the Administration to confirm all information contained in the Technical Proposal submittal with third parties, and indicate limitations, if any, to such authorization.

As an attachment to the cover letter and excluded from the page limitation for this section, provide documentation that the Design Team has Professional Liability Insurance.



2. Mobility (20 Pages Maximum) – CRITICAL

Goal: Provide improvements that maximize vehicle throughput, minimize vehicle travel times and create a more predictable commuter trip along I-270.

Value Statement: Effective and reliable traffic flow along I-270 is necessary for its function as a primary commuter route and for the vitality of economic development. Describe the improvements you will provide to address and manage congestion along I-270 while reducing delay and increasing reliability.

- i. Provide the Design-Builder’s improvements for maximizing vehicle throughput and minimizing vehicle travel times. Specifically, discuss how the Design-Builder’s improvements will reduce recurring congestion in terms of travel time, vehicle throughput, density, intersection operations, queues and vehicle network performance, both along I-270 and on the connecting ramps and arterial roadways. – **CRITICAL**
- ii. Discuss how the Design-Builder’s improvements will provide a more predictable commuter trip, including innovative technologies or techniques that will be provided. – **SIGNIFICANT**
- iii. Discuss the performance life of the improvements; that is, the time it will take for congestion levels to return to pre-construction levels and the basis for the Design-Builder’s assessment of performance. – **IMPORTANT**

3. Safety (10 Pages Maximum) – IMPORTANT

Goal: Provide for a safer I-270 corridor.

Value Statement: Safer flow of traffic will increase mobility along I-270 by reducing incidents that increase delay and reduce travel time reliability. Discuss how your improvements will increase safety along I-270.

- i. Discuss how the Design-Builder's improvements will reduce the number, duration and severity of incidents and how the Design-Builder's approach will facilitate the management of incidents after construction is completed. – **CRITICAL**
- ii. Discuss any innovative technologies or techniques that the Design-Builder would provide and how they will address the project's safety goal. – **SIGNIFICANT**
- iii. Discuss techniques that Design-Builder will utilize to mitigate any conditions in its approach which may not meet typical design standards and how the mitigation will provide for a safer I-270 corridor after construction is completed. – **IMPORTANT**

4. Operability/Maintainability/Adaptability (10 Pages Maximum) – IMPORTANT

Goal: Provide improvements that minimize SHA operations and maintenance activities while being adaptable to future transportation technological advancements.

Value Statement: The Administration values a project which will provide for ease of operations and maintenance that will also minimize impacts to the efficient flow of traffic on I-270. Provide improvements that minimize operations and maintenance to the Administration while being adaptable to future transportation technological advancements.

- i. Discuss the maintenance requirements of the Design-Builder's improvements, focusing separately on the pavement and non-pavement elements of the plan. Address the personnel and equipment requirements after construction is completed. – **CRITICAL**
- ii. Discuss the compatibility and integration of the Design-Builder's improvements with current transportation infrastructure, including CHART's system. – **SIGNIFICANT**
- iii. Discuss any innovative technologies or techniques that the Design-Builder will implement and the proposed plan and requirements for maintenance and operations and adaptability to future transportation technological advancements. How will the Design-Builder ensure that the newest innovations are incorporated into the design prior to agreement of a Construction Agreed Price for construction? – **IMPORTANT**

5. Well-Managed Project (10 Pages Maximum) – IMPORTANT

Goal: Provide a Project Management and Work Plan that addresses communications, coordination and risk management, achieves a collaborative

partnership with all members of the project team and stakeholders, and successfully advances the project goals.

Value Statement: For this project to be a success, a Project Management and Work Plan that fosters communication, partnering, and a problem solving relationship between the Design-Builder, Administration, and project stakeholders will be necessary. Provide a Project Management Plan that will result in a well-managed and collaborative project. Discuss the Design-Builder's Work Plan to develop the project to achieve its goals.

- i.** Discuss the following key elements of the Design-Builder's Project Management Plan: Communications, Coordination and Risk Management. – **CRITICAL**
 - ii.** Discuss how the Design-Builder's Work Plan will develop the project design internally within the Design-Builder and collaboratively with the Administration and other stakeholders to advance the project goals. Discuss the services to be provided by the Design-Builder. Discuss how the Design-Builder will provide quality control and quality assurance of the design. – **SIGNIFICANT**
 - iii.** Discuss how the Design-Builder will minimize environmental impacts (water resources, forest/trees, air, noise, etc.), right-of-way impacts, and utility impacts to ensure the project can be implemented and constructed in a time efficient manner. – **SIGNIFICANT**
 - iv.** Discuss the Design-Builder's approach to achieve timely implementation of its proposed improvements, including a discussion of anticipated design and construction packages. – **IMPORTANT**
 - v.** Discuss what modifications would be needed to the proposed Watkins Mill Interchange project to be compatible in a safe and efficient manner with your Innovative Congestion Management improvements. – **IMPORTANT**
- 6. Legal & Financial Information (Limit 1 Page Maximum, excluding copies of underlying team agreements)**

The structure of the Legal and Financial information shall include:

- i.** Design - Builder Organization. Briefly describe the proposed legal structure of the Design-Build Contractor and team, and provide copies of underlying agreement(s). Confidential price data may be excluded or eradicated from the organizational legal documents provided.
- ii.** Liability, State whether Major Participant firm(s) who will be party to the prime Design-Build contract with the Administration will have joint and several liability, and how liability is being apportioned between other firms of the

design- builder team. Provide documentation that you have met the requirements for Professional Liability Insurance including agreements between participants

7. Appendix

Copies of all addenda letters and responses to RFIs issued by the Administration shall be included in the Appendix. Copies of the Proposer's PTCs and the Administration's PTC letters for each incorporated PTC shall be included in the appendix. An electronic copy of the VISSIM traffic model for 2015 and 2040 build design years and Concept Evaluation Templates (.pdf and excel files) populated with the VISSIM traffic model results for 2015 and 2040 build design years shall be included. The Proposer shall use VISSIM version 7.00-13, shall follow SHA's VISSIM Modeling Techniques, shall not modify calibration parameters, such as vehicle inputs, vehicle routes, driving behavior, link behavior type, lane change distance, speed distributions and decisions without providing justification to the SHA and must use the simulation parameters and random seeds as provided in the VISSIM files when reporting results. The Proposer may also include other 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

C. Price Proposals

The Price Proposal has three items.

1. Design-Builder Design and Preconstruction Services Fee

The Proposer shall provide a lump sum price for Design and Preconstruction Services to deliver the improvements provided in its Technical Proposal including packages it proposes for CAPs, at the percent completion it feels is needed to price each CAP, and for the schedules it proposes for each CAP. This lump sum price shall be the upset limit for the Design and Preconstruction Services. These services shall be paid to the Design-Builder based on services actually provided and invoiced. The Design-Builder shall provide a breakdown of this fee showing the name and fee of each party receiving payment under this item. The Design-Builder shall also provide a breakdown for each firm showing the estimated direct labor breakdown, estimated direct expenses, approved audited overhead, and profit.

2. Construction Management Fee

The Proposer shall state their Construction Management Fee, which will include all Construction performed under this contract. The Construction Management Fee 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 Construction Management Fee:

Included in Construction Management Fee	Not Included in Construction Management Fee
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 project direct costs such as materials, equipment, and labor
Profit	

A separate breakdown of the Construction Management Fee will be provided by the Proposer showing the breakdown of all components used in establishing the fee. The Construction Management Fee shall exclude all Proposer costs and risk related to the performance of the construction work. Risk will be priced into sub-contracted amounts and into self-performed work as part of any CAP.

3. Construction Services Fee

The Construction Services Fee shall include all project Utility Relocation costs, Right-of-way Acquisition costs and CAP(s) and shall be equal to the Project Budget less the Design-Builder's Design and Preconstruction services fee and the Design-Builder's Construction Management Fee.

D. Evaluation of Proposals, Opening And Selection

1. Best Value Process

The Technical Proposal will be evaluated on the pass/fail and technical evaluation factors identified in the Evaluation of Technical Proposals section below. An evaluation committee (Committee) will determine the pass/fail status and overall technical rating of each Proposal. Once the overall technical rating is determined for each Technical Proposal, the Price Proposal results will be provided to the Committee and a tradeoff analysis will be performed. The Evaluation Committee will prepare a recommendation to the Selection Official indicating which Proposal is the most advantageous to the State (i.e., represents the Best Value). The Selection Official, 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 D-B Teams submittal is the most advantageous to the State, the Technical Proposal will have a substantially higher relative importance than the Price Proposal.

2. Evaluation of Technical Proposals

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

- Mobility – **CRITICAL**
- Safety – **IMPORTANT**
- Operability/Maintainability/Adaptability – **IMPORTANT**
- Well-Managed Project – **IMPORTANT**

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 information provided, as well as the stability and collective capabilities of the Design-Builder relative to this Project to perform as an integrated team. Each Proposal must achieve a rating of “Pass” on any “Pass/Fail” factor listed to receive further consideration. Failure to achieve a “Pass” rating on any “Pass/Fail” factor will result in the Proposal being rated UNACCEPTABLE, the Price Proposal will not be rated and the Proposer will be disqualified.

- Legal & Financial Information

iii. Other

The pass/fail requirements include provision of all required forms included in the Proposal Package, properly completed and signed (if required).

iv. Technical Proposal Evaluation Committee

The Administration will assemble Evaluation Teams and an Evaluation Committee consisting of key staff from appropriate offices within the Administration. The Evaluation Teams and Evaluation Committee will review the Technical Proposals to verify that all requirements of the RFP have been met, and to evaluate the proposals based on the evaluation factors.

v. Evaluation Process

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 Proposals in its entirety. Evaluations will be limited to the information provided in the specific Evaluation Factor section and will not consider information provided in other sections. Each Leader of the Evaluation Team will be part of the Evaluation Committee with other appropriate key staff within the Administration. This Evaluation Committee will review each Evaluation Factor and determine an overall Technical Rating for each Proposer.

vi. Evaluation Results

The technical evaluation factors and the overall Technical Proposal will be rated by and adjectival (qualitative/descriptive) method. The following adjectival ratings shall be used in 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 which 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 to further differentiate the strengths or limitations within the technical ratings of

EXCEPTIONAL, GOOD, and ACCEPTABLE to more clearly differentiate the Proposals.

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.

3. Evaluation of Price Proposals

The evaluation of the Price Proposal will be performed based on the information in Section XII. C. above to determine if the Price Proposal is reasonable. 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.

4. Communications

The Administration may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals or otherwise to address issues that might prevent the Proposal from being placed in the Competitive Range. This process will be initiated by 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.

5. 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:

- A) 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;
- B) A Proposal that, after the initial evaluation, is rated lower than “ACCEPTABLE-” for any technical evaluation factor or; and/or
- C) Any Proposal that includes a Price Proposal that is considered Unacceptable.

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

6. 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.

i. 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.

ii. 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.

iii. 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 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.

7. 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 a 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.

8. 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 will have a substantially higher relative importance than the Price Proposal. In the event that two overall technical ratings are the same (e.g. "GOOD" and "GOOD"), a fully integrated trade off analysis will be performed by the Evaluation Committee. A trade off analysis can be as simple or complex as needed to differentiate which Proposer is the most advantageous to the State or provides the "Best Value." 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 Official 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 the all technical and price factors and trade off analysis as 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, receive at least an "ACCEPTABLE" on all technical evaluation factors.

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 concept ideas provided to the Administration are expected to be included in the Price Proposal, final plan, design and construction phases. The Administration or successful proposer may use ideas and approaches excluding proprietary or protected information.

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

E. Award and Execution of Contract

All conditions of award and execution procedures will be in accordance with GP-Section 3 of the Specifications.

The Design-Builder will be given Notice to Proceed after Execution of the Contract

has been completed. At this point, additional field investigation may continue and design work may proceed with payment to be made as outlined in Section XVI.

XIII. 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

XIV. 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.

XV. CONTRACT TIME AND LIQUIDATED DAMAGES

The Design-Builder shall establish the Contract Time for this project. The Contract Time shall be a calendar date and entered by the Proposer on Page 41 of 43 in the Proposal Form of the Request for Proposals. Liquidated Damages will be established by the Administration for each CAP and only apply after agreement of a CAP.

XVI. PROGRESS PAYMENTS

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

Invoice Number - (created by the Contractor)

Federal Tax I.D. Number

Remittance Address

FMIS Number MO069A51



Contract Description - IS 270 – Innovative Congestion Management Project

Construction Contract MO0695172

Payment Amount –

Description of Work provided in invoice period including a breakdown of all costs

XVII. PROPOSED PROCUREMENT SCHEDULE

	Issue RFQ/RFP	June 7, 2016
	Final Date for RFQ Questions	July 11, 2016
	SOQ submittal to MSHA	July 25, 2016
	Reduced Candidate List (RCL) Notified	August 11, 2016
	One-on-One Meetings	August 24-25, 2016
	One-on-One Meetings	September 28-29, 2016
	One-on-One Meetings	October 26-27, 2016
	Last Day to submit PTCs	November 17, 2016
	Final Date for RFP Questions	December 8, 2016
	Letter of Interest	December 15, 2016
	Technical and Price Proposal Submittal	January 19, 2017
	Selection of Successful Proposer	February 2017
	Notice to Proceed (Anticipated)	March 2017

This is the proposed procurement schedule for this project as of the date of the issuance of this RFQ/RFP.

Appendix – Contract Provisions

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)
IMPLEMENTATION SCHEDULE FOR DEVICES USED IN THE MAINTENANCE OF
TRAFFIC**

Except as otherwise specified in this Section, all items for the maintenance of traffic, including those listed under the following categories, shall be crashworthy in conformance with Level 3 or other Level as specified by the Engineer in conformance with the safety crash testing and performance criteria published in the National Cooperative Highway Research Program (NCHRP) Report 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features" or the Manual for Assessing Safety Hardware (MASH). When conformance with NCHRP Report 350 or MASH is required, the Contractor shall provide the Engineer with the manufacturers' certifications that the devices comply with the specified criteria.

Unless specifically waived by an attachment to these Contract Provisions, devices must be approved by the Office of Traffic and Safety.

Category 1 Devices

These devices are cones, tubular markers, flexible delineator posts, and drums, all without any accessories or attachments, which are used for channelization and delineation.

Category 2 Devices

These devices are Type I, II, and III barricades; portable sign supports with signs; intrusion alarms; and drums, vertical panels, and cones, all with accessories or attachments.

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.
 - (3) Steel/Aluminum Barrier.
- (c) Temporary End Treatments.

Category 4 Devices

These devices are area lighting supports, arrow panels, and portable variable message signs that are usually portable or trailer-mounted.

CONTRACT PROVISIONS
(NCHRP) REPORT 350 AND MASH IMPLEMENTATION SCHEDULE

CONTRACT NO. MO0695172
 2 of 2

WORK ZONE DEVICES	IMPLEMENTATION SCHEDULE TO CONFORM TO NCHRP REPORT 350 OR MASH CRITERIA
CATEGORY 1 Cones, tubular markers, flexible delineator posts, and drums (all without any accessories or attachments)	All devices shall conform to NCHRP Report 350 or MASH criteria.
CATEGORY 2 Type I, II, and III barricades; portable signs supports with signs; intrusion alarms; and drums, vertical panels, and cones (all with accessories or attachments)	All devices shall conform to NCHRP Report 350 or MASH criteria.
CATEGORY 3 (a) Truck Mounted Attenuators (TMAs); Trailer Truck Mounted Attenuators (TTMAs) (b) Temporary Barriers (1) Concrete Barrier (2) Traffic Barrier W Beam and Water Filled Barrier (3) Steel/Aluminum Barrier (c) Temporary End Treatments	All devices shall conform to NCHRP Report 350 or MASH criteria.
CATEGORY 4 Portable trailer mounted devices including area lighting supports, arrow panels, and changeable message signs	The Contractor may use devices that do not conform to NCHRP Report 350 or MASH criteria, until compliance dates are established. Use of these devices shall comply with the provisions of Part 6 of the MUTCD.



CONTRACT PROVISIONS
OCCUPYING WETLANDS

CONTRACT NO. MO0695172
1 of 1

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.



**AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF MINORITY BUSINESS ENTERPRISES
FOR STRAIGHT STATE CONTRACTS
(Where the Contractor's bid exceeds \$50,000)**

A. General

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

Administration Representative – A Minority Business Enterprise (MBE) Officer of an Administration who enforces the laws and regulations pertaining to 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 minority businesses fully in contracts and programs.

Business Enterprises – A 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 MBE.

Director, Office of Equal Opportunity – The individual designated for the Administration's overall MBE compliance.

Joint Venture – An association of a MBE 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 MBE 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.

Minority Business Enterprise (MBE) – 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 interests of the physically or mentally disabled.

MBE Directory – A compilation of businesses certified by MDOT as 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.

MBE Program – A program developed by MDOT to implement the requirements of Title 14, Subtitle 3 of the State Finance Procurement Article, Annotated Code of Maryland and Title 10, Subtitle 3 of the State Finance Procurement Article of the Annotated Code of Maryland for Leases of State-Owned Property.



CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. MO0695172
2 of 10

MBE Participation Packet – The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The MBE Participation Packet shall consist of the MBE Utilization Affidavit and the MBE Participation Schedule, both of which must be submitted with your bid or initial price proposal. The MBE Participation Packet also includes the following documents which are submitted after bids or proposals are opened: MDOT Outreach Efforts Compliance Statement (Form MDOT-OP-014-2), the MDOT MBE Subcontractor Project Participation Affidavit (Form MDOT-OP-015-2), the MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) and the Minority Contractor Unavailability Certificate (Form OOC46).

Minority or Minority Person for Straight State Contracts - Member of one of the following socially and economically disadvantaged groups:

1. African American – An individual having origins in any of the Black racial groups of Africa;
2. American Indian/Native American – An individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which he/she claims to be a part, but does not include and individual of Eskimo or Aleutian origin;
3. Asian – An individual having origins in the far East, Southeast Asia, or the Indian Subcontinent and who is regarded as such by the community of which the person claims to be a part;
4. Hispanic – An individual of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin regardless of race, and who is regarded as such by the community or which the person claims to be a part;
5. Women – This category shall include all women, regardless of race or ethnicity, although a woman who is also a member of an ethnic or racial minority group may elect that category in lieu of the gender category; or
6. Physically or Mentally Disabled – An individual who has an impairment that substantially limits one or more major life activity, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business.

B. MBE and Good Faith Effort Requirements

1. This contract includes an MBE participation goal for subcontracting, and/or procurement of materials, and/or services. Bidders/Offerors must make a good faith effort to meet the MBE participation goal **before bids or proposals are due**, including outreach efforts. A bid or initial proposal must include both a completed and executed Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule. The failure of a bidder to complete and submit the Certified MBE Utilization and Fair Solicitation



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Affidavit and MBE Participation Schedule shall result in a determination that the bid is not responsive. The failure of an offeror to complete and submit the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule 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 MBE goal, prior to completing the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule and prior to submitting a bid or initial proposal bidders (or offerors) including those bidders or offerors that are certified MBEs 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 certified MBEs 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 certified MBEs solicited and to document these attempts;
 - d. Assist certified MBEs 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 certified MBEs.
3. The bidder shall seek commitments from minority business enterprises by subcontracting and/or procurement of materials and/or services, the combined value of which equals or exceeds the established Contract goal of 25 percent of the total value of the prime Contract. The Administration has further established that, within this Contract goal, there shall be a sub-goal of a minimum of 6 percent participation by firms classified as African American-owned firms, a sub-goal of 9 percent participation by firms classified as Woman-owned firms, a sub-goal of a minimum of 0 percent participation by firms classified as Hispanic American-owned firms, and a sub-goal of a minimum of 0 percent participation by firms classified as Asian American-owned firms. A bidder may count toward its MBE goals expenditures for materials and supplies obtained from MBE regular dealers and/or manufactures provided that the MBE assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). The bidder may count sixty (60) percent of its expenditures to a MBE regular dealer that is not a manufacturer, provided that the MBE supplier performs a commercially useful function in the supply process. The apparent low bidder shall submit to the Administration, within ten (10) business days after notification that it is the apparent low bidder, an acceptable Affirmative Action Plan for the utilization of Minority Business Enterprises in this Contract. The Contract will not be awarded without the bidder's Affirmative Action Plan being approved by the Administration.
4. The Affirmative Action Plan shall include as a minimum:



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- a. The name of an employee designated as the bidder's Minority Business Liaison Officer.
 - b. A complete MBE Subcontractor Project Participation Affidavit (MDOT-OP 015-2), of minority business enterprises, from among those whose names appear in the MDOT MBE Directory or who are otherwise certified by MDOT as being minority business enterprises. Except as permitted by law and approved by the Administration, the MBE Subcontractor Project Participation Affidavit (MDOT-OP 015-2) submitted after the opening of bids or proposals shall include all MBE firms identified on the MBE participation schedule submitted with the bid or initial proposal with a percentage of participation that meets or exceeds the percentage of participation indicated in the bid or initial proposal. The MBE Subcontractor Project Participation Affidavit (MDOT-OP 015-2) shall be completed and signed by the Bidder and MBE for each business listed in the MBE Participation Schedule.
 - c. A completed Outreach Efforts Compliance Statement (MDOT-OP 014-2).
5. When a bidder intends to attain the appropriate goal for minority business enterprise participation by use of a joint venture, the bidder shall submit a Joint Venture Disclosure Affidavit (MDOT D-EEO-006-A) showing the extent of the MBE 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 signed by all parties.
 6. When the proposed MBE participation does not meet the MBE Contract goals, information sufficient to demonstrate that the bidder has made good faith efforts to meet these goals shall be required.

7. Request for Exception to the MBE Goal

If the bidder is unable to secure from MBEs by subcontracting and/or by procurement of materials and/or services, commitments which at least equal the appropriate percent of the value of the prime Contract at time of bid, the bidder shall request, in writing, waiver of the unmet portion of the goal. This request must be initiated by checking the appropriate box on the Certified MBE 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:

- a. A detailed statement of efforts made prior to bid to contact and negotiate with MBEs including the dates, names, addresses, and telephone numbers of MBEs who were contacted; a description of the information provided to the MBEs regarding the work to be performed, anticipated schedule for portions of the work to be performed; and a detailed statement of the reasons why additional prospective agreements with MBEs were not reached;
- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goals;



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- c. For each MBE 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 MBE contacted but unavailable, a Minority Contractor Unavailability Certificate, (OOC46), signed by the minority business enterprise, or a statement from the bidder stating that the MBE 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 MBE 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.

- (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of certified MBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the MBEs to respond to the solicitation. The bidder must determine with certainty if the MBEs are interested by taking appropriate steps to follow up initial solicitations.
- (2) Selecting portions of the work to be performed by MBEs in order to increase the likelihood that the MBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE participation, even when the bidder or offeror might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested MBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) (a) Negotiating in good faith with interested MBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs to perform the work.

(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs is not in itself sufficient reason for a bidder's failure to meet the contract MBE goal, as



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- 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 MBEs if the price difference is excessive or unreasonable.
- (5) Not rejecting MBEs 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.
 - (6) Making efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - (7) Making efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (8) 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 MBEs.
 - (9) 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 MBE 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 MBE 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. It is the policy of MDOT to encourage its Contractors to utilize, on a continuing basis, MBE banks.



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10. Bidder Records

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

11. Bidders Cooperation

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

12. Bidder MBE Modifications

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

The low bidder's failure to participate in any of the above proceedings or failure to furnish information after written request may result in rejecting the bid and non-award of the Contract.

C. RECORDS AND REPORTS

1. The Contractor shall keep such records as are necessary to determine compliance with its Minority Business Enterprise utilization obligations. The records kept by the Contractor shall be designed to include:
 - a. The name of minority and non-minority subcontractors and suppliers, the type of work materials or services being performed on or incorporated in this project, the monetary value of such work materials or services, the terms of performance and/or delivery, copies of all cancelled checks paid to subcontractors and suppliers and a record of all payments made to subcontractors and suppliers.
 - b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of minority business enterprises on this project.
 - c. The progress and efforts made in seeking out minority contractor organizations and individual minority contractors for work on this project.
2. The Contractor shall submit reports, on a monthly basis, of those contracts and other business transactions executed with minority business enterprises, with respect to the records referred to in C. 1., above, in such form, manner and content as prescribed by the Administration. The reports shall be due monthly on the 15th calendar day of each month. If the Contractor cannot submit their report on time, the Contractor shall notify the Administration's representative and request additional time to submit the report. Failure of the Contractor to report in a time manner may result in a finding of noncompliance. Additional report may be required by the Administration upon request.



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3. To insure compliance with the certified MBE Contract participation goal, the Contractor shall:
 - a. Submit monthly reports listing all unpaid invoices over 30 days, from certified MBE subcontractors, and the reason payment has not been made.
 - b. Include in its agreement, with certified MBE subcontractors a, requirement that MBE subcontractors are to submit monthly, to the Administration, a report identifying the prime Contractor and listing the following:
 - (1) Payment received from the prime Contractor, in the proceeding 30 days;
 - (2) Invoices for which the subcontractor has not been paid.
4. All such records and reports shall be retained for a period of three years following acceptance of final payment and shall be available for inspection by the Maryland Department of Transportation and this 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's 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 judgement 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 the noncompliance to the Administrator, who may direct the imposition of one or more of the sanctions listed below:
 - a. Suspension of work on the project, pending correction;
 - b. Withholding payment or a percentage thereof, pending correction;
 - c. Referral of MBEs to the MDOT office of MBE, for review for decertification, for review/referral to the Attorney General's Office for review/initiation of debarment or for review for criminal prosecution through the MDOT Office of General Counsel;
 - d. Initiation of suspension in accordance with COMAR regulations;
 - e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;
 - f. Any other action as appropriate, within the discretion of the Administrator.
2. If the documents used to determine the status of a MBE contains false, or misleading or misrepresenting information, the matter will be referred to the MDOT Office of the General Counsel for appropriate action. In addition, when directed by the Administrator,



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the Contractor shall terminate, without liability to the Administration, its contract with a firm, which for any reason, is either no longer certified or no longer eligible to do business in the State. The Contractor shall promptly submit plans for maintaining the required MBE participation on the project or appropriate request for waiver of all or part of the Contract goal with appropriate documentation to support Good Faith Efforts (as established by COMAR including the MDOT MBE/MBE Program Manual). The program and all revisions require the Administrator's approval.

- 3. Liquidated Damages.** This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$23.00 per calendar day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$82.00 per week per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.



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Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

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.



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
TRAFFIC CONTROL PLAN CERTIFICATION

CONTRACT NO. MO0695172

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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.

Option 3 _____

The TCP is not accepted and revision shall be submitted for approval in accordance with the Administration's Specifications 104.01.

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 will 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

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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 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

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- (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

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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).



*Maryland Department of Transportation
State Highway Administration*

**CONTRACT PROVISIONS
PREVAILING WAGE INSTRUCTIONS**

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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



CONTRACTOR AFFIRMATIVE ACTION PROGRAM

1. GENERAL

- a. The Contractor shall cooperate with the Maryland Department of Transportation in carrying out its equal opportunity obligations and in the Department's review of the Contractor's activities performed under this contractual agreement.
- b. All contractors shall comply with the Governor's Code of Fair Practices, Promulgated July, 1976. The Contractor shall include these requirements in every subcontract with such modifications of language as is necessary to make these provisions binding on the subcontractor.
- c. All contractors shall comply with Maryland Department of Transportation Minority Business Enterprise Program requirements.

2. APPLICABILITY

- a. The Maryland Department of Transportation Contractor Affirmative Action/Equal Employment Opportunity Program requirements are applicable to all contractors doing business with the Maryland Department of Transportation.
- b. The Maryland Department of Transportation Minority Business Enterprise Program requirements are applicable to construction contracts in excess of \$100,000.

3. DEFINITIONS

- a. Affirmative Actions - The efforts exerted toward achieving equal employment opportunity through positive, aggressive and continuous results-oriented measures to correct past and present discriminating practices and their effects on the conditions and privileges of employment.
- b. Contractor/Subcontractor - The individual, partnerships, firm or corporation undertaking the execution of work under the terms of a contract and acting directly or through his agents or employees.
- c. Corrective Action - A contractor's written and signed commitment outlining specific actions to be taken with time limits, goals, etc., to correct a violation of applicable EEO regulations.
- d. Discrimination - A distinction in treatment, whether intentional or unintentional, based on political or religious opinion or affiliation, race, color, creed or national origin or sex, physical or mental handicap or age, except where sex, handicap or age involves a bona fide job requirement.
- e. Equal Employment Opportunity Officer - A designated employee of the Contractor whose responsibility it shall be to implement and maintain the Affirmative Action Plan.



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CONTRACTOR AFFIRMATIVE ACTION PROGRAM

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- f. "Good Faith Effort" - A results-oriented positive action designed to achieve Affirmative Action objectives or goals.
- g. Personnel Actions - All decisions respecting employment including, but not limited to hiring, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training to include apprenticeship, pre-apprenticeship or on-the-job training.

4. LEGAL MANDATES

- a. Title VI, Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in all programs and activities which receive Federal Financial Aid. Employment discrimination is prohibited if a primary purpose of Federal assistance is a provision of employment, e.g., apprenticeship, training, work study, or similar programs. Revised guidelines in 1973 prohibit discriminatory employment practices in all programs if such practices cause discrimination in services provided to beneficiaries of the program.
- b. Title VII, Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972). Title VII prohibits discrimination because of race, color, religion, sex or national origin, in any term, condition, or privilege of employment.
- c. Executive Order 11246 (as amended). This order, issued by the President in 1965, requires Equal Employment Opportunity/Affirmative Action Programs by all Federal contractors and subcontractors. It also requires that firms with contracts over \$50,000.00 and 50 or more employees develop and implement written programs, which are to be monitored by the Federal Office of Contract Compliance. Specific requirements for such result oriented programs are identified in the Revised Order # 4 issued by the Federal Office of Contract Compliance, U.S. Department of Labor. These requirements include identifying areas of minority and female under-utilization, numerical promotional and hiring goals, and other actions to increase minority employment in classifications where they are currently under-utilized.
- d. The Age Discrimination Act of 1967 prohibits employers of 25 or more persons from discriminating against persons 40-65 years of age in any area of employment due to their age.
- e. National Labor Relations Act of 1935. Discrimination on the basis of race, religion, sex, or national origin constitutes an unfair labor practice. It shall be unlawful under this Act for employers to participate with unions in the commission of any discriminatory practices or to practice discrimination in a manner which gives rise to racial, or other division, amongst employees to the detriment of organized union activity. It shall be unlawful for unions to exclude individuals discriminatorily from union memberships, thereby causing them to lose job opportunities, to discriminate in the representation of union members or non-members in collective bargaining, in the processing of grievance, or in any other respect which may cause or attempt to cause employers to enter into discriminatory agreements, or otherwise discriminate against members and non-members.



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- f. Governor's Code of Fair Practices for the State of Maryland (Amended). The Governor of Maryland issued a revised Code of Fair Practices which was promulgated March 3, 1988, in recognition of the State's responsibility to root out the evils of discrimination on the basis of race, color, creed, national origin, sex and age. This Code was amended so as to be in compliance with Federal mandates regulating laws pertinent to Equal Employment Opportunity/Affirmative Action.
- g. Rehabilitation Act of 1973 (Public Law 93-112). This law provides a statutory basis for the Rehabilitation Services Administration and to authorize programs to promote and expand employment opportunities in the public and private sectors for handicapped individuals.
- h. Article 78A, Section 7A, Annotated Code of Maryland provides for nondiscrimination in State construction contracts and subcontracts. This provision obligates the Contractor not to discriminate in any manner against any employee or applicant for employment because of race, creed, color, or national origin and obligates subcontractors to the same.
- i. Other Laws. Employment discrimination has also been ruled by courts to be prohibited by the Civil Rights Acts of 1866 and 1870, the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and the Equal Pay Act of 1963. Action under these laws on behalf of individuals or groups may be taken by individuals, private organizations, trade unions, or other groups.

5. ASSIGNMENT OF RESPONSIBILITIES

- a. The Contractor will designate an Equal Employment Opportunity Officer. He/she will have the responsibility of implementing our Affirmative Action Plan. He/she will coordinate, advise and assist management and other key officials. He/she will render periodic reports to the responsible executives relative to the state of progress and make appropriate recommendations along these lines to the executives relative to the state of progress and make appropriate recommendations along these lines to the executives of this project.
- b. The name of the EEO Officer, telephone number and address where he/she can be reached concerning any acts or alleged acts of discrimination, will be posted on the bulletin board at the home office as well as on the bulletin boards on all job sites.

6. DISSEMINATION OF POLICY

- a. The Contractor will take appropriate steps to insure that all employees are advised of its policy of nondiscrimination of its interest in actively and affirmatively providing equal employment opportunity for all citizens. The steps include:
 - (1) Periodic meetings of supervisory and personnel office employees to be conducted at least every six months so that our EEO policy and plan may be revised and explained.
 - (2) All new supervisory and personnel office employees to be made aware of our EEO policy and plan as soon as practicable, but certainly within thirty (30) days following the date the first reporting for duty.



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- (3) Making our EEO policy known to all employees, prospective employees, and potential sources of employees, through schools, employment agencies, labor unions, college placement officers, etc., by taking the following actions:
 - (a) Notices and posters setting forth our EEO policy will be placed in areas readily accessible to employees and applicants for employment.
 - (b) Our EEO policy and the procedure for implementing the EEO policy will be brought to the attention of employees through meetings, employee handbooks, or other appropriate means.

7. RECRUITMENT

- a. The Contractor will include in all advertising the following notation: "An Equal Opportunity Employer." We will insert all such advertisements in newspapers or other publications having large circulation among minorities and females in the area from which the project work is derived.
- b. We will, unless precluded by a valid collective bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority and female applicants, including, but not limited to, State employment agencies, school, college, and minority/female organizations, i.e., the Urban League, NAACP, etc. To meet this requirement, we shall identify sources of potential minority/female employees and establish with such sources procedures whereby minority/female applicants may be referred to us for employment consideration.
- c. We will develop procedures for promoting the employment of minority/female youth on an after-school, summer and vacation basis.
- d. We will encourage our employees to refer minority/female applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority/female applicants will be discussed with employees.

8. PERSONNEL ACTIONS

- a. To avoid discrimination in any of our personnel actions, the following procedures will be followed:
 - (1) We will conduct periodic inspections of projects sites to insure that working conditions and employee facilities do not indicate discriminatory practices.
 - (2) We will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - (3) We will periodically review personnel actions in depth to determine whether there is any evidence of discrimination. Where evidence is found, we will promptly take corrective action.



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- (4) We will investigate all complaints of alleged discrimination and shall attempt to resolve such complaints. Additionally, if the investigation indicates that the discrimination may affect persons other than the complainant, appropriate corrective actions will include other persons. Upon completion of each investigation, we will inform every complainant of all avenues of appeal.

9. TRAINING AND PROMOTION

- a. To eliminate any discrimination in training and promotion, the following actions will be taken:
 - (1) We will assist in locating, qualifying, and increasing the skills of minority/female employees and applicants for employment.
 - (2) Consistent with our employment requirements and as permissible under State regulations, we will make full use of training programs, i.e., preapprenticeship, apprenticeship, and on-the-job training programs for the geographical area of contract performance.
 - (3) We will advise employees and applicants for employment of available training programs and entrance requirements for the programs.
 - (4) We will periodically review the training and promotional potential of minority/female employees and shall encourage eligible employees to apply for such training and promotions.

10. UTILIZATION OF UNIONS

- a. In carrying out our Affirmative Action Plan, we will use good faith efforts to obtain the cooperation from unions we rely on, in whole or part, as a source of employees to increase opportunities for minority/female groups. We, either directly or through a contractor's association acting as our agent, will include the procedures set forth below:
 - (1) Use good faith efforts to develop, in cooperation with the unions, joint training programs aimed at qualifying more minorities/females for membership in the unions and increasing their skills so they may qualify for higher paying employment.
 - (2) Incorporate an Equal Employment Opportunity clause into all union agreements so that they shall be contractually obligated not to discriminate in the referral of job applicants.

11. UTILIZATION OF SUBCONTRACTORS

- a. We will use good faith efforts to employ subcontractors whose employees reflect minority/female groups approximately equal to the number available in the current labor pool population, or owned by minority/female.
- b. We will use good faith efforts to assure that all subcontractors comply with equal employment obligations as defined in the amended Code of Fair Practices.



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12. RECORDS AND REPORTS

- a. In accordance with the Governor's Code, Article III, Section A and C (2), we will keep such records as are necessary to determine compliance with our equal opportunity obligations. The records kept shall be designed to indicate:
 - (1) The number of minority/female and other persons employed in each work classification of the project.
 - (2) The progress and efforts being made in cooperation with unions, if any, to increase minority/female employment opportunities.
 - (3) The progress and efforts being made in locating, hiring, training, qualifying and upgrading minority/female employees.
 - (4) The progress and efforts being made in securing the services of minority/female subcontractors.
- b. All such records will be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department of Transportation.
- c. We will submit to the Administration a monthly report for the first three months after construction begins and, thereafter, upon request for the duration of the project. This report shall indicate the number of minority/female employees currently engaged in each work classification.

3. MONITORING

- a. We will periodically evaluate our Affirmative Action Plan and the results achieved to insure that the plan is in compliance with our commitments.



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**SUGGESTED GOALS FOR TIMETABLES
FOR
MINORITY WORKHOUR UTILIZATION**

For all trades, the following goals and timetables, as appropriate, for minority-workhour utilization shall be applicable:

- (1) Baltimore Metropolitan SMSA - this area (Region I) includes Anne Arundel, Baltimore, Carroll, Harford, Howard Counties and Baltimore City. The total distribution of work hours (actual work hours performed on the job) for minorities and females shall be consistent with the following utilization goals for minorities and females, respectively, and shall apply to all trades.

UTILIZATION:

MINORITIES

From January 1, 1980 to October 3, 1980 23.5% - 27.5%
After October 3, 1980 23.0%

FEMALES

From August 16, 1979 to August 15, 1980 6.9%
After August 16, 1980 6.9%

- (2) Eastern Shore Maryland NON-SMSA - this area (Region II) includes Caroline, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico, and Worcester Counties. The total distribution of work hours (actual work hours performed on the job) for minorities and females, respectively, and shall apply to all trades.

UTILIZATION:

MINORITIES

From January 1, 1980 to October 3, 1980 21% - 24%
After October 3, 1980 23.8%

FEMALES

From August 16, 1979 to August 15, 1980 6.9%
From August 16, 1980 6.9% (3)



CONTRACT PROVISIONS
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- (3) Southern Maryland NON-SMSA - this area (Region III) includes Calvert, Frederick, Washington and St. Marys Counties. The total distribution of work hours (actual work hours performed on the job) for minorities and females shall be consistent with the following utilization goals for minorities and females, respectively, and shall apply to all trades.

UTILIZATION:

MINORITIES

From January 1, 1980 to October 3, 1980	25%
After October 3, 1980	25.2%

FEMALES

From August 16, 1979 to August 15, 1980	6.9%
After August 16, 1980	6.9%

- (4) Washington, D.C. Metropolitan SMSA - this area (Region IV) includes Charles, Montgomery and Prince Georges Counties. The total distribution of work hours (actual work hours performed on the job) for minorities and females shall be consistent with the following utilization goals for minorities and females, respectively, and shall apply to all trades.

UTILIZATION:

MINORITIES

After October 3, 1980	28.0%
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FEMALES

From August 16, 1979 to August 15, 1980	6.9%
After August 16, 1980	6.9%

- (5) Western Maryland NON-SMSA - this area (Region V) includes Allegany and Garrett Counties. The total distribution of work hours (actual work hours performed on the job) for minorities and females shall be consistent with the following utilization goals for minorities and females, respectively, and shall apply to all trades.



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UTILIZATION:

MINORITIES

From January 1, 1980 to October 3, 1980	3.0%
After October 3, 1980	4.8%

FEMALES

From August 16, 1979 to August 15, 1980	6.9%
After August 16, 1980	6.9%

- (6) Wilmington Delaware SMSA - this area (Region VI) includes Cecil County only. The total distribution of work hours (actual work hours performed on the job) for minorities and females shall be consistent with the following utilization goals for minorities and females, respectively, and shall apply to all trades.

UTILIZATION:

MINORITIES

From January 1, 1978 thru October 3, 1980	15% - 18.5%
After October 3, 1980	12.3%

FEMALES

From August 16, 1979 to August 15, 1980	6.9%
After August 16, 1980	6.9%



NOTICE TO ALL HOLDERS OF THIS CONTRACT DOCUMENT

HIGH VISIBILITY SAFETY APPAREL POLICY

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

STATEMENT OF POLICY.

- (a) The High Visibility Safety Apparel Policy provides a standardized apparel program.
- (b) The program seeks to improve the visibility of all persons who work on Administration highways and rights-of-way.
- (c) All apparel shall contain the appropriate class identification label.
- (d) Compliance with this policy is retroactive and becomes effective immediately. All affected employees shall receive high visibility apparel awareness training.

APPLICABILITY. This policy applies to all Administration employees and all other persons who work on Administration highways and rights-of-way. All workers shall wear, at a minimum, Class 2 ANSI/ISEA 107/2004 apparel.

- (a) For Administration employees, this apparel shall have a fluorescent yellow-green background material color and be the outermost garment worn.
- (b) Retro-reflective material color for Administration employee apparel shall be silver or white 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 from the surrounding work environment. The retro-reflective material may be contrasted by fluorescent orange background material not exceeding one and one half inches on either side of the retro-reflective material.
- (c) For non-Administration employees, this apparel shall be either fluorescent orange-red or fluorescent yellow-green background material color and be the outermost garment worn.
- (d) Retro-reflective material color for non-Administration employee apparel shall either be orange, yellow, white, silver, yellow-green, or a 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 from the surrounding work environment.



CONTRACT PROVISIONS
HIGH VISIBILITY SAFETY APPAREL POLICY

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REFERENCES.

- (a) ANSI/ISEA 107/2004 standard – American National Safety Institute/International Safety Equipment Association
- (b) MUTCD 2003 – Manual for Uniform Traffic Control Devices - Sections 6D.03B and 6E.02
- (c) Visibility Research – The VCTR 1989 report concludes that fluorescent colors, when compared with non-fluorescent colors, enhance the daytime conspicuity of worker clothing.

DEFINITIONS.

- (a) Apparel – The outermost high-visibility garment worn by employees who work on Administration highways and rights-of-way.
- (b) Highways – All roads owned by the Maryland Department of Transportation and maintained by the Administration.
- (c) High Visibility – The ability for workers to be distinguishable as human forms to be seen, day and night, at distances that allow equipment operators and motorists to see, recognize, and respond.



TERMS AND CONDITIONS

**TC SECTION 4
CONTROL OF WORK**

TC-4.01 WORKING DRAWINGS

96 **DELETE:** The first paragraph “All working drawings... in order named:” in its entirety.

INSERT: The following.

All working drawings shall be on sheets measuring 22 by 34 in. or 24 by 36 in. and shall have a standard title block at the lower right corner approximately 4 by 8 in. (2 in. for the revision column on the left side and the remaining 6 in. for the title) indicating the following information in the order named:

TERMS AND CONDITIONS

TC SECTION 4
CONTROL OF WORK

TC-4.02 FAILURE TO MAINTAIN PROJECT

98 **ADD:** As a third paragraph.

Additionally, an appropriate deduction will be made from the Contractor's next progress estimate for each day or portion thereof that Maintenance of Traffic deficiencies exist, and will continue until the deficiencies are satisfactorily corrected and accepted by the Engineer. Any portion of a day will be assessed a full day deduction. The deduction will be equal to a prorata share of the lump sum price bid for Maintenance of Traffic or an amount prorated from the Engineer's estimate, whichever is more. The amount prorated will be the per diem amount established by using the working days (based upon calendar dates when required) divided into the total value of the bid item or the Engineer's estimate of that item, whichever is more.

The above noted deduction will be assessed on the next progress estimate if:

The Contractor does not take action to correct the deficiencies and properly assume the responsibilities of maintaining the project (as determined by the Engineer) within four hours of receiving a notice to comply with the required maintenance provisions.

The deduction will be equal to the daily prorated share of the lump sum price bid for Maintenance of Traffic or \$1,000 per day, whichever is more for each day or portion thereof that the deficiencies exist, and will continue until the deficiencies and proper assumption of the required maintenance provisions are satisfactorily corrected and accepted by the Engineer. The amount of monies deducted will be a permanent deduction and are not recoverable. Upon satisfactory correction of the deficiencies, payment of the Maintenance of Traffic lump sum item will resume.

TERMS AND CONDITIONS

TC SECTION 5
LEGAL RELATIONS AND PROGRESS

TC-5.01 INSURANCE

100 **DELETE:** In its entirety.

INSERT: The following.

TC-5.01 INSURANCE FOR DESIGN-BUILD

In addition to the provisions of GP-7.14 (Liability Insurance), the following shall apply on Administration Contracts.

The Contractor shall maintain in full force and effect third party legal liability insurance necessary to cover claims arising from the Contractor's operations under this agreement that cause damage to the person or property of third parties. The insurance shall be under a standard commercial general liability (CGL) form endorsed as necessary to comply with the above requirements and the other requirements of this Section. The State of Maryland shall be listed as an additional insured on the policy. The limit of liability shall be no less than \$1 000 000 per occurrence/\$2 000 000 general aggregate. The insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted.

When specified in the Contract Documents or otherwise required by law, the Contractor shall carry the type and amounts of insurance in addition to any other forms of insurance or bonds required under the terms of the Contract and these Specifications.

All insurance policies required by this Section, elsewhere in the Contract Documents, or otherwise required by law, shall be kept in full force and effect until all work has been satisfactorily completed and accepted. The Contractor shall be responsible for the payment of all deductibles or self-insured retentions.

All insurance policies required by this Section, elsewhere in the Contract Documents, or otherwise required by law, (other than Workers' Compensation Policies) shall include endorsements:

- (a) Stating that the State of Maryland is additional insured with respect to liability arising from the Contractor's operations under this agreement that cause damage to the person or property of third parties.
- (b) Stating that such coverage as is provided by the policies for the benefit of the additional insureds is primary and any other coverage maintained by such additional insureds (including self-insurance pursuant to the Maryland Tort Claims Act) shall be non-contributing with the coverage provided under the policies.

- (c) Containing waivers of subrogation with respect to all named insureds and additional insureds.
- (d) Stating that the insurer has the duty to adjust claims and provide a defense with regard to such claims made against the additional insured.

All insurance policies required by this Section, elsewhere in the Contract Documents, or otherwise required by law, (including Workers' Compensation Policies) shall be endorsed to state that the insurer shall provide at least 7 days notice of cancellation or nonrenewal to:

Maryland State Highway Administration
Director, Office of Construction
7450 Traffic Drive
Hanover MD 21076

Evidence of insurance shall be provided to the Administration at the address listed above prior to the award of the Contract by means of a Certificate of Insurance with copies of all endorsements attached.

Any policy exclusions shall be shown on the face of the Certificate of Insurance or provided with the Certificate of Insurance.

Certificates of Insurance shall comply with all requirements of the Maryland Annotated Code, Insurance Article, § 19-116. Certificates of Insurance shall be on a form approved by the Maryland Insurance Commissioner (Commissioner). Standard Certificate of Insurance forms currently adopted for use by the Association for Cooperative Operations Research (ACORD) or the Insurance Services Office (ISO) are deemed approved by the Commissioner and are acceptable. Outdated ACORD or ISO forms (those with a revision date prior to the date of the form currently adopted for current use by ACORD or ISO) are not acceptable. The Contractor shall ensure that all required Certificates of Insurance satisfy all requirements of §19-116 of the Insurance Article, including the prohibition against the issuance of any certificate of insurance that contains false or misleading information or that purports to amend, alter, or extend the coverage provided by the policies referenced in the certificate.

The Certificate of Insurance shall be accompanied by a document (a copy of State License or letter from insurer) that indicates that the agent signing the certificate is an authorized agent of the insurer.

No acceptance and/or approval of any Certificate of Insurance or insurance by the Administration shall be construed as relieving or excusing the Contractor, or the Contractor's Surety from any liability or obligation imposed upon either or both of them by the provisions of this Contract or elsewhere in the Contract Documents.

The cost of the insurance will not be measured but the cost will be incidental to the Contract lump sum price.

Contractor and Railroad Public Liability and Property Damage Insurance shall be provided as specified in TC-6.05.

.01 Indemnification

The Design-Build Team shall indemnify, defend and hold the Administration and its officers, directors, employees, agents and consultants from and against all claims, actions, torts, costs, losses, and damages for bodily injury (including sickness, disease or death) and/or tangible property damage (other than to the Work itself) arising out of or resulting from the performance of the Work by the Design-Build Team, any subcontractor, subconsultant, engineer, supplier, any individual or entity directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Damages covered by the preceding sentence include, but are not limited to, all fees and charges of engineers, attorneys and all other professionals and all mediation, arbitration, court or other dispute resolution costs.

The indemnity obligation set forth in the preceding paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Build Team or any subcontractor, subconsultant, engineer, supplier, or other individual or entity under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

.02 Additional Insurance Requirements

.02.1 Professional Liability Insurance

Professional Liability Insurance Policy, which covers the Indemnification Clause of this contract (paragraph .02 above), as it relates to errors, omissions, negligent acts or negligent performance in the work performance under this contract by the Designer, its subcontractors, employees and agents. The limitation of the Courts and Judicial Proceedings Article states Annotated Code of Maryland Section 5-108(b) shall apply.

.02.2 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 U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, and other federal laws where applicable.

.02.3 Comprehensive Automobile Liability Insurance

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

.02.4 Administrative & General Provisions

a. Each policy, with the exception of Workers' Compensation and Professional Liability Insurance, shall name the State Highway Administration.

b. Defense of Claims

Each insurance policy shall include a provision requiring the carrier to investigate and defend all named insured against any and all claims for death, bodily injury or property damage, even if groundless.

c. Compliance

The Design-Build Team shall be in compliance with this Section provided it procures either one policy or insurance covering all work under the contract or separate insurance policies for all segments constituting the entire project. In either case, a certificate of insurance must be filed for each policy with the Administration indicating that all required insurance has been obtained.

The Design-Build Team is responsible for assuring that insurance policies required by this Contract comply with all the requirements. The Design-Build Team is also responsible to determine that all subconsultants, subcontractors, suppliers, and all other individuals or entities performing Work for the Project carry all applicable insurance coverages set forth in this section, including, in all cases, Workers' Compensation, Automobile, and Commercial General Liability Insurance. The Design-Build Team shall indemnify and hold harmless the Administration from any claims arising from the failure to fulfill said responsibilities.

d. Reporting Provisions

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Administration, its officers, agents and employees.

e. Separate Application

The insurance provided by the Design-Build Team shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

.02.5 Notice of Cancellation or Modification

All policies of insurance provided in this Section shall be endorsed to provide that the insurance company shall notify the Administration, the Design-Build Team, and each named insured at least thirty (30) days prior to the effective date of any cancellation or modification of such policies.

TC-5.03 SUBCONTRACTING AND SUBCONTRACTORS

- 102 **INSERT:** The following before the paragraph titled ‘**Subcontractors Prompt Payment.**’

Percentage of Own Workforce Required. The Design-Build Team must perform at least fifty percent of the value of the on-site construction work with its own workforce, not including the percent goal required in the contract proposal to be performed by DBE's. The Designer must perform at least fifty percent (50%) of the value of the design work with its own workforce, not including the work required by DBE's.

- 106 **ADD:** The following sections at the end of section ‘**TC-5.05 DETERMINATION AND EXTENSION OF CONTRACT TIME.**’

TC-5.06 OWNERSHIP OF DOCUMENTS

All plans, specifications, inspection records, or other documents ("Documents") generated by the Design-Build Team and all consultants, subcontractors, suppliers, manufacturers performing Work on the Project are the property of the Administration. Upon request by the Administration, the Design-Build Team or any other person or entity performing Work will produce and deliver such Documents as requested, both in hard copy and electronic format.

TC-5.07 ACCESS TO AND RETENTION OF RECORDS

The Design-Build Team and its employees and Subcontractors shall make all project records available for inspection by the Project Manager and all other persons authorized by the Administration, and shall permit such representatives to interview employees during working hours. Project records include daily time reports, records of force account work, quality control or assurance documentation, inspectors reports, employment records, payrolls, equal opportunity records, construction conference records, partnering records, and any other documents in any way related to the Project substantiating payment. These records shall be retained at least three years after final acceptance of the project.



TERMS AND CONDITIONS

**TC SECTION 6
RESTRICTIONS AND PERMITS**

112 **DELETE:** TC-6.10 RECYCLED OR REHANDLED MATERIAL in its entirety.

INSERT: The following.

TC-6.10 RECYCLED OR REHANDLED MATERIAL.

Refer to 900.03 in the Contract Documents.



TERMS AND CONDITIONS

**TC SECTION 6
RESTRICTIONS AND PERMITS**

**TC-6.12 STRUCTURE UNDERCLEARANCES AND
OVERHEAD CLEARANCES**

114 **DELETE:** The last paragraph, “Resurfacing” in its entirety.

INSERT: The following.

Resurfacing. The minimum underclearances shall be maintained whenever resurfacing a roadway. This may require grinding the existing pavement prior to placing the resurfacing material. Immediately after completing the resurfacing operation and when the lane closures are still in the effect, the Contractor, in the presence of the Engineer, shall measure the minimum vertical underclearance. The Engineer will submit results to the Office of Structures. The cost of these measurements will be incidental to other pertinent items specified in the Contract Documents. Whenever highway overpass bridges are in the general vicinity of a pedestrian bridge and the grinding is not required to maintain the specified clearances, the roadway under the pedestrian bridge shall be ground to provide a higher underclearance than the adjacent bridges. This requirement will be waived whenever the Engineer contacts the District Engineer and the Office of Structures and determines that the grinding would have an adverse effect on drainage, utilities, etc.

SPECIAL PROVISIONS

CONTRACT NO. MO0695172

TC 6.14 — RESTRICTIONS FOR PLACING AND USING EQUIPMENT ON
STRUCTURES, OR STORING MATERIALS ON/OR AGAINST STRUCTURES

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TERMS AND CONDITIONS

**TC SECTION 6
RESTRICTIONS AND PERMITS**

115 **DELETE:** TC-6.14 STORING MATERIALS AND EQUIPMENT ON/AGAINST
STRUCTURES RESTRICTIONS in its entirety.

INSERT: The following.

**TC-6.14 RESTRICTIONS FOR PLACING AND USING EQUIPMENT ON
STRUCTURES, OR STORING MATERIALS ON/OR AGAINST STRUCTURES**

Materials, and waste shall not be stored on or against any structure or structure element and equipment shall not be placed or used on any structure during the construction phase or finished or final configuration unless the written permission is obtained from the Administration's District Office and the Office of Structures for each type of material or equipment to be stored.

Loads, vehicle or other weight (materials etc.) that exceeds the bridge posted weight limit, if posted, or exceeds Maryland's legal vehicle loads on bridges, (with no posted bridge weight limits), are prohibited on the structure at any time, except as modified by the following. If the Contractor's intended operations will impose loads on the structure that exceed the weights listed above, the Contractor shall submit to the Engineer the type of material, its weight, the area that will be affected by the load, and its location on the structure. No stock pile of material regardless of unit weight shall be more than 4 ft high. If equipment is to be used, submit the maximum gross weight, axle spacing, load per axle, and proposed location on the structure. The maximum gross weight must include the vehicle weights in the most critical load position, i.e. front axle on crane with boom extended and element hanging. A special Hauling Permit is a requirement anytime equipment is moved over a structure that is over legal weight limit.

If any load requires evaluation, then a professional engineer registered in the State of Maryland and experienced in bridge design shall perform a load analysis to ensure that the load on the structure will not create an overstress condition on any bridge element. This analysis also includes effects of legal loads crossing the structure, if applicable. Analyses shall be submitted for review and loading cannot be imposed until written approval is received. Such submission does not guarantee acceptance by the Office of Structures, which reserves the sole right to accept or reject the proposed loading.

For structures under construction or rehabilitation, the Contractor shall also submit information pertaining to the phase of construction, such as which members have been modified or separated from the remainder of the structure, or have been newly constructed.

Any materials or equipment that would have a detrimental affect to the structure such as aluminum products placed against concrete surfaces shall be adequately protected to prohibit them from coming in contact with each other. Any discoloration or damage to the structure as a result of material or equipment being stored on/against the structure shall be removed or repaired.



TERMS AND CONDITIONS

TC SECTION 7 PAYMENT

TC-7.05 PROGRESS PAYMENTS

(a) Current Estimate.

127 **DELETE:** (2) **Variable retainage.** “The contract will.....reduction may be reconsidered.”

INSERT: The following.

(3) Variable Retainage. The Contract will be subject to a variable retainage. Any variation in retainage (increase or decrease) will be at the discretion of the Administration and the District Engineer. Those meeting the minimum qualifications may have retainage reduced upon request of the Contractor with consent of surety. This request shall be processed through the District Engineer. If, in the opinion of the District Engineer at any time during the performance of the work, the evaluation of the contract or Contractor changes, retainage reduction may be reconsidered.

Minimum Qualifications are as follows: After 50 percent project completion and upon request, Contractors with 'A' evaluations for the last two years may be reduced from 5 percent to 1 percent. Project completion percentage will be based upon actual work completed (excluding monies paid for stored materials). An interim evaluation of the current project would need to be completed and would need to be an 'A'.

At 50 percent project completion and upon request, Contractors with 'B' evaluations or any combination of 'A' and 'B' evaluations for the last two years may be reduced from 5 percent to 2.5 percent, and remain at that level until released upon final payment. Project completion percentage will be based upon actual work completed (excluding monies paid for stored materials). An interim evaluation of the current project would need to be completed and would need to be an 'A' or 'B'.

Contractors with 'C' evaluations or any combination of 'C' and 'D' evaluation for the past two years will begin and remain at 5 percent for the life of the project.

Contractors with a 'D' evaluation for the last two years will begin at 5 percent. Project performance will be evaluated monthly with the retainage being raised to 10 percent for continued 'D' performance.



SPECIAL PROVISIONS INSERT
TC-7.05 PROGRESS PAYMENTS

CONTRACT NO. MO0695172
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New Bidders. Contractors who have not been previously rated by the Administration may be eligible for a reduction in retainage. To be eligible, their past performance on highway and bridge work shall be documented by the government agency with whom they had a contract and their performance shall be documented on Administration forms. Contractors who do not fit into the above criteria would require a 5 percent retainage throughout the life of the Contract.

Appendix – Guidelines and References

**Maryland State Highway Administration
Guidelines and References**

Author or Agency	Title
AASHTO	A Guide for Transportation Landscape and Environmental Design, 1991
AASHTO	A Policy on Geometric Design of Highways and Streets, 2011
AASHTO	A Policy on Design Standards – Interstate System, 5 th Edition, 2005
AASHTO	Guide for High-Occupancy Vehicle (HOV) Facilities, 3 rd Edition, 2004
AASHTO	DARWin Pavement Design Software
AASHTO	Guide for Design of Pavement Structures, 1993
AASHTO	Guide for the Development of Bicycle Facilities, 2012
AASHTO	Guide for the Planning, Design, and Operation of Pedestrian Facilities, 2004
AASHTO	Guide Specifications for Structural Design of Sound Barriers, 2002
AASHTO	Highway Safety Design and Operations Guide, 1997
AASHTO	LRFD Bridge Design Specification, 7th Edition, 2014
AASHTO	LRFD Bridge Construction Specifications, 3 rd Edition, 2010 including interims through 2016
AASHTO	LRFD Guide Specification for Design of Pedestrian Bridges, December 2009 including interims through 2015
AASHTO	M288 - Geotextile Specification for Highway Applications, September 2007
AASHTO	M320 - Performance-Graded Asphalt Binder
AASHTO	M323 - Superpave Volumetric Mix Design
AASHTO	Manual for Condition Evaluation of Bridges, 2nd Edition, 2011
AASHTO	Manual on Subsurface Investigations, 1st Edition, 1988
AASHTO	Preparing High-Quality NEPA Documents for Transportation Projects, July 2014
AASHTO	R25 - Superpave Volumetric Design for Hot-Mix Asphalt
AASHTO	Roadside Design Guide, 4th Edition 2011 with July 2015 Errata
AASHTO	Roadway Lighting Design Guide, 2005
AASHTO	Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 3rd Edition for traffic signal structures 4th Edition for sign structures (overhead, cantilever, and ground mounted)
AASHTO	Standard Specifications for Transportation Materials and Methods of Sampling and Testing, 35th Edition, 2015
AASHTO	T 194 - Standard Method of Test for Determination of

	Organic Matter in Soils by Wet Combustion, 2008
AASHTO	T 88 - Standard Method of Test for Particle Size Analysis of Soils
AASHTO	Highway Safety Manual (HSM)
AASHTO/AWS	D1.5M/D1.5: Bridge Welding Code, 2010
ACI	ACI 318 - Building Code Requirements for Structural Concrete, 2011
ACI	ACI 207 – Guide to Mass Concrete
ACOE	HEC-RAS Software, Version 4.1.0
ADA	Americans with Disabilities Act Accessibility Guidelines
ANSI	ANSI A300 (Part 1) - American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Management - Standard Practices (Pruning), 2008
ANSI	ANSI A300 (Part 2) - American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Management - Standard Practices (Soil Management), 2011
ANSI	ANSI A300 (Part 3) - American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Management - Standard Practices (Supplemental Support Systems), 2013
ANSI	ANSI Z133.1 - Safety Requirements, 2012
ANSI	ANSI Z60.1 - American Standard for Nursery Stock, April 2014
ASCE	Standard 7, Minimum Design Loads for Buildings and Other Structures
ASTM	Annual Books of ASTM Standards
ASTM	D420 Standard Guide to Site Characterization for Engineering Design and Construction Purposes
ASTM	D4694 - Standard Test Method for Deflections with a Falling-Weight-Type Impulse Load Device, 2015
ASTM	D6433 - Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys, 2011
ASTM	E274 - Standard Test Method for Skid Resistance of Paved Surfaces Using a Full-Scale Tire, 2011
ASTM	E501 - Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests, 2008
ASTM	E950 - Standard Test Method for Measuring the Longitudinal Profile of Traveled Surfaces within an Accelerometer Established Inertial Profiling Reference, 2009
ASTM	E-1527 standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (complies with CERCLA “all appropriate inquiry”)
ASTM	E-1903 standard Practice for Environmental Site

	Assessments: Phase II Environmental Site Assessment Process (continuation of an assessment)
ASTM	8, Standard Practice for Evaluation of Transportation-Related Earthborne Vibrations
ASTM	R13, Standard Practice for Conducting Geotechnical Subsurface Investigations
ASTM	R21, Standard Recommended Practice for Drilling for Subsurface Investigations - Unexpectedly Encountering Suspected Hazardous Material
ASTM	Standards in Building Codes, 2014
ATSSA	Quality Guidelines for Temporary Traffic Control Devices and Features, 2014
CFR	Code of Federal Regulations (CFR)
COMAR	Code of Maryland Regulations
COMAR	COMAR 15.20.07 - Agricultural Operation Nutrient Management Plan Requirements, 2000
County	County Roadway Standards
DoIT	State of Maryland System Development Life Cycle Methodology
DoIT	State of Maryland Information Technology Security Policy and Standards
DoIT	State of Maryland Information Technology Non-Visual Standards
DoIT	State of Maryland System Development Life Cycle Methodology
DNR	Article 5-103 - Reforestation
DNR	COMAR 08.07.02 - Roadside Tree Care
DNR	COMAR 08.19 - Forest Conservation
Dunncliff	Geotechnical Instrumentation for Monitoring Field Performance, 1986
FEMA	44 CFR Part 10 - Environmental Considerations, October 2011
EPA	National Ambient Air Quality Standards for Particulate Matter, January 15, 2013
EPA	Transportation Conformity Regulations as of April 2012
EPA	Transportation Conformity Rule Restructuring Amendments, March 24, 2010
EPA	Using MOVES in Project-Level Carbon Monoxide Analyses, December 2010
EPA	Quantitative Hot-Spot Analyses in PM2.5 and PM10 Nonattainment and Maintenance Areas, November 2015 Update to Transportation Conformity Guidance
FEMA	44 CFR Part 9 - Floodplain Management and Protection of Wetlands, October 2011

FEMA	Conditional Letter of Map Revision (CLOMR)
FHWA	"Bridge Rails" Memorandum, August 1986 and updated May 1997
FHWA	23 CFR 940.11 - Project Implementation, April 2008
FHWA	Durability of Geosynthetics for Highway Applications, January 2001
FHWA	FHWA NHI-01-031 - Subsurface Investigations (Geotechnical Site Characterization), 2001
FHWA	FHWA-ED-88-053 Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans, 2003
FHWA	FHWA-HI-97-013 - Design and Construction of Driven Pile Foundations – Volume I, 1997
FHWA	FHWA-HI-97-014 - Design and Construction of Driven Pile Foundations – Volume II, 1997
FHWA	FHWA-HI-98-034 - Geotechnical Instrumentation, 1998
FHWA	FHWA-NHI-00-043 - Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines, 2000
FHWA	FHWA-NHI-05-037 - Geotechnical Aspects of Pavements, 2006
FHWA	FHWA-NHI-09-087 - Corrosion/Degradation of Soil Reinforcements for Mechanically Stabilized Earth Walls and Reinforced Soil Slopes, 2009
FHWA	FHWA-NHI-10-016 - Drilled Shafts: Construction Procedures and LRFD Design Methods, 2010
FHWA	FHWA-RD-03-031 - Distress Identification Manual for the Long-Term Pavement Performance Program, 2003
FHWA	FHWA-RD-82-046 – Tiebacks, Executive Summary
FHWA	FHWA-RD-82-047 - Tiebacks
FHWA	FHWA-RD-89-93 – Soil Nailing for Stabilization of Highway Slopes and Excavations
FHWA	FHWA-SA-91-048 - Laterally Loaded Pile Analysis Program for the Microcomputer, (COM624P) Version 2.0
FHWA	FHWA-SA-93-068 – Soil Nailing Field Inspectors Manual
FHWA	FHWA-SA-94-035 The Osterberg Load Cell for Load Testing Drilled Shafts and Driven Piles, 1994
FHWA	FHWA-SA-96-069 – Manual for Design and Construction Monitoring of Soil Nail Walls, 1997
FHWA	FHWA-SA-96-071 – Mechanically Stabilized Earth Walls and Reinforced Soil Slopes – Design and Construction Guidelines, 1996
FHWA	FHWA-SA-97-070 - Micropile Design and Construction Guidelines, 2000
FHWA	FHWA-SA-98-074 - DRIVEN 1.0 User's Manual: A Program for Determining Ultimate Vertical Static Pile

	Capacity
FHWA	FHWA-SA-98-086 - Ground Improvement Technical Summaries Volume I
FHWA	Geosynthetic Design and Construction Guidelines, 1998
FHWA	Geotechnical Engineering Circular No. 1: Dynamic Compaction, 1995
FHWA	Geotechnical Engineering Circular No. 2: Earth Retaining Systems, 1996
FHWA	Geotechnical Engineering Circular No. 4: Ground Anchors and Anchored Systems, 1999
FHWA	Geotechnical Engineering Circular No. 5: Evaluation of Soil and Rock Properties, 2002
FHWA	Geotechnical Engineering Circular No. 6: Shallow Foundations, 2002
FHWA	Geotechnical Engineering Circular No. 7: Soil Nail Walls, 2015
FHWA	Geotechnical Engineering Circular No. 8: Design and Construction of Continuous Flight Auger Piles, 2007
FHWA	Ground Improvement Technical Summaries Volumes I and II
FHWA	Guidance on NEPA and Planning Requirements, February 9, 2011
FHWA	Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA, December 2012
FHWA	Manual on Uniform Traffic Control Devices (MUTCD), 2009
FHWA	NCHRP Report 350 - Recommended Procedures for the Safety Performance Evaluation of Highway Features, 2004
FHWA	NCHRP Report 553 - Crashworthy Work Zone Traffic Control Devices, 1998 and later interim revisions
FHWA	NCHRP Report 672 - Roundabouts: An Informational Guide, 2nd Edition, 2010
FHWA	Section 4(f) Policy Paper, July 20, 2012
FHWA	Standard Highway Signs, 2004 Edition & 2012 Supplement
FHWA	Segmentation and Logical Termini Papers Guidance, 1993
FHWA	Traffic Noise Model, Version 2.5.
FHWA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as Amended (1997)
IEEE	Guide for Concept of Operations Document, 2007
IEEE	Guide for Developing System Requirements Specifications, 2009
IEEE	Independent Verification and Validation

IEEE	National Electric Safety Code, 2012
IES	DG-5-94 Recommended Lighting for Walkways and Class 1 Bikeways, 1994
IES	RP-19-01 Roadway Sign Lighting
IES	RP-22-11, American National Standard for Tunnel Lighting, 2011
IES	RP-8-00, American National Standard Practice for Roadway Lighting, 2000
ITE	Manual of Transportation Engineering Studies, 2nd Edition, 2010
ITE	Traffic Engineering Handbook, 7th Edition, December 2015
MDE	2000 Maryland Stormwater Design Manual, Appendix A, Landscaping Guidance for Stormwater BMPs, May 2009 Revision
MDE	2000 Maryland Stormwater Design Manual, Volumes I and II, May 2009 Revision
MDE	2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control
MDE	Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated - Guidance for National Pollutant Discharge Elimination System, June 2011 Draft
MDE	Environmental Site Design Process & Computations, 2010
MDE	Environmental Site Design Redevelopment Examples, 2010
MDE	Guidelines for Construction on Nontidal Waters and Floodplains
MDE	Maryland Erosion and Sediment Control Guidelines for State and Federal Projects, Published January 1990, Revised January 2004
MDE	Maryland Storm Water Design Manual, October 2000, Revised May 2009
MDE	Maryland's Waterway Construction Guidelines, Issued September 1999, Revised November 2000
MDE	National Pollutant Discharge Elimination System General Permit for Construction Activity, 2012
MDE	Nontidal Wetland and Waterway Construction Permit Application and Authorization for MD 404
MDE	Stormwater Design Guidance – Addressing Quantity Control Requirements, 2012
MDE	Stormwater Design Guidance – Submerged Gravel Wetland, 2012
MDE	Stormwater Management And Erosion & Sediment Control Guidelines For State And Federal Projects 2015
MDOT	Maryland Action Plan for Highway Project Development,

	2011
NEMA	National Electrical Manufacturers Association Standards
NFPA	502: Standard for Road Tunnels, Bridges and Other Limited Access Highways, 2014
NFPA	70: National Electrical Code, 2014
NFPA	National Fire Protection Association
NRCS	Pond Code MD-378, 2000
NTCIP	National Transportation Communications for ITS Protocol
OSHA	29 CFR 1910 - Occupational Safety and Health Standards
OSHA	29 CFR 1926 - Safety and Health Regulations for Construction
SHA	2040 LOS Wiring Diagram – Design Forecast Volumes
SHA	ABSCOUR Program
SHA	Accessibility Policy and Guidelines for Pedestrian Facilities Along State Highways, 2010
SHA	Accessible Pedestrian Signals Design Guidelines
SHA	Advance Street Name Sign Policy and Guidelines, 2012
SHA	Approved Proprietary Noise Barrier Systems, September 2009
SHA	Articulating Traffic Detector Mount (Plate ITS-21)
SHA	Bicycle Policy and Design Guidelines, January 2015
SHA	Book of Standards for Highways, Incidental Structures and Traffic Control Applications
SHA	Design Request Form Instructions and Guidelines
SHA	DMS Signface Layouts: CCTV (Plate ITS-1)
SHA	Environmental Documentation for Local Government Projects
SHA	Field Guide for Erosion and Sediment Control, May 2013
SHA	Flagger Policy at Signalized Intersections
SHA	Grass Channel Credit Paper
SHA	Guidance for the Use of Portable Changeable Message Signs (PCMS) in Work Zones, September 2013
SHA	Guidance on Maintenance of Traffic Alternatives Analysis (MOTAA), November 2016
SHA	Guidelines for Application of Rumble Strips and Rumble Stripes, August 22, 2011
SHA	Guidelines for Preparing Stormwater Management Concept Reports, April 2003
SHA	Guidelines for the Use of Dynamic Lane Merging Strategies, November 2012
SHA	Guidelines for Traffic Barrier Placement and End Treatment Design, March 2006
SHA	High Visibility Apparel Policy, 2007
SHA	Highway Design Policy and Procedure Manual

SHA	Highway Drainage Manual Design Guidelines, 2009
SHA	Highway Drainage Manual, December 1981 or as amended herein and any revisions thereof
SHA	Highway Hydraulic Division Stormwater Management Facility Safety Policy for Design
SHA	Hinged CCTV Camera Pole Details (Plates ITS-18 to ITS-20)
SHA	Integrated Vegetation Management Manual for Maryland Highways, 2005
SHA	Interstate Access Point Approval Process in Maryland, 2016
SHA	Landscape Design Guide, 2015
SHA	Lighting Guidelines, 2013
SHA	Line Striping Material Selection Policy
SHA	List of Qualified Detectable Warning Surface, 2013
SHA	List of Qualified Loop Sealants, 2006
SHA	List of Qualified Permanent Pavement Markings, 2006
SHA	List of Qualified Removable Preformed Pavement Marking Material for Maintenance of Traffic, 2006
SHA	Manual for the Inspection of Highway Right of Way in Karst Areas
SHA	Maryland High Voltage Line Act
SHA	Maryland Manual on Uniform Traffic Control Devices (MD MUTCD), 2011
SHA	Maryland Standard Sign Book
SHA	Maryland State Police Criteria for Use in Work Zones
SHA	Maryland Statewide ITS Architecture, December 2009
SHA	MSMT 563 – Operation of the Inertial Profiler, June 2012
SHA	NEMA Size 5 UPS Battery Cabinet Details (ITS-24 and ITS-25)
SHA	Office of Structures Guide for Completing Structure Inventory and Appraisal Input Forms, June 2013
SHA	Office of Structures Manual on Hydrologic and Hydraulic Design, 2015
SHA	Office of Structures Policy and Procedure Manual (PPM) including Draft PPMs included in the Appendix which shall be considered final for this Contract
SHA	Office of Structures Structural Standards Manual, Volumes I and II
SHA	Office of Traffic and Safety Approved Product List for Temporary Traffic Control Devices and Miscellaneous Items
SHA	Office of Traffic and Safety Capacity/Queuing Analysis Procedures for Intersections
SHA	Office of Traffic and Safety TEDD Traffic Control

	Devices Design Manual, July 2006
SHA	Overhead DMS Structure and Access (Plates ITS-10 to ITS-16)
SHA	January 2015 Pavement Design Guide
SHA	Pavement Marking Policy and Guidelines
SHA	Pedestal DMS Access System (Plates ITS-2 to ITS-7)
SHA	Pedestal DMS Access System (Plates ITS-8 and ITS-9)
SHA	Policy for the Use of Temporary Traffic Barrier in Work Zones, November 2008
SHA	Recommended Procedure for Determining Types of Left Turn Phasing
SHA	Roadway Delineation Policy
SHA	Roundabout Design Guidelines, October 2012
SHA	Roundabout Traffic Design Manual
SHA	Sediment and Stormwater Guidelines and Procedures for State Highway Administration (February 20, 2015)
SHA	SHA Office of Structures Standards for Ground Mounted (Standard and Tall) and Retaining Wall Mounted Concrete Noise Barriers
SHA	SHA Stormwater Site Development Criteria - Review Guidelines, 2010
SHA	SHA-MSP InterAgency Work Zone Service Agreement, 2009
SHA	Special Provisions and Special Provision Inserts to the Standard Specifications
SHA	Specifications for Consulting Engineer's Services, Volume II, Section VIII, April 1986
SHA	Standard Office of Traffic and Safety Shelf Typical
SHA	Standard Specifications for Construction and Materials, 2008
SHA	Standard Specifications for Subsurface Explorations, 2012
SHA	Storm Water Management Safety Policy
SHA	Stormwater Management Site Development Criteria
SHA	Stormwater Management, Erosion and Sediment Control and Waterway Construction Permit Issues and Approaches
SHA	Stormwater NPDES Program - Standards Procedures Manual, 1981 or as amended herein and any revisions thereof
SHA	SWM Concept Report
SHA	Transportation Management Plans: Guidelines for Development, Implementation and Evaluation, November 2006
SHA	Type 332/334 Cabinet Details (Plates ITS-22 and ITS-23)
SHA	Type 332/334 Cabinet Foundation Detail (Plate ITS-17)

SHA	Utility Policy, Revised March 1998
SHA	V004-10 Surveyor
SHA	Work Zone Lane Closure Analysis Guidelines, November 2006
SHA	Work Zone Safety and Mobility Policy, 2006
SHA	Work Zone Safety Policy
SHA	Work Zone Safety Tool Box
SHA	Work Zones on 65/60 mph Roadways
SHA	Highway Noise Policy & Implementation Guidelines, Final, Effective Date July 13, 2011 (Revised August 19, 2011)
SHA	CHART System Architecture Revision 18
SHA	CHART Business Area Architecture Revision 13 Release 14
SHA	CHART Business Area Architecture Revision 13 Release 14 Appendices
SHA	WO 42 LCP Phase 3 System Architecture
SHA	WO 46 EORSV2 System Architecture
SHA	WO 47 CHART Web System Architecture
SHA	CHART Long Range Strategic Deployment Plan
SHA/MDE	Application of Hydrologic Methods in Maryland, September 2010
SHA/MDE	Stormwater Management Process Agreements and Interpretations, April 2003
SHA/MDE	Stormwater Quality Management Banking Agreement, June 2, 1992 and amended March 1, 1994 and August 2003
TRB	Accessible Pedestrian Signals: Synthesis and Guide to Best Practices, June 2007
TRB	Highway Capacity Manual, 5th Edition, 2010
TRB	TCRP Report 19 - Guidelines for the Location and Design of Bus Stops, 1996
USACE	1987 Corps of Engineers Wetlands Delineation Manual
USACE	2012 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)
USACE	Maryland State Programmatic General Permit-5 guidelines
USACE	Clean Water Act Section 404 Permit Application and Authorization
USACE	Clean Water Act Section 401, Water Quality Certification
USACE	2008 Mitigation Rule
USDA	The PLANTS Database (http://plants.usda.gov)
USDA	State of MARYLAND 2014 Wetland Plant List (http://wetland_plants.usace.army.mil/)

Appendix – Price Proposal



**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 to IS 270 Innovative Congestion Management located in, Frederick and Montgomery Counties, Maryland, for which Technical and Price Proposals will be received until 12:00 o'clock noon on January 19, 2017. Technical and Price Proposals shall be submitted to:



State Highway Administration
Office of Procurement and Contract Management
Fourth Floor, C-405
707 N. Calvert Street
Baltimore, MD 21202

In response to the advertisement by the Administration, requesting proposals 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 proposal as principals, and that an examination has been made of the work site, the Specifications, and Request for Proposals, 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
1001 100000	LUMP SUM	. CONSTRUCTION MANAGEMENT FEE	XXX	LUMP SUM	_____	_____	_____
1002 100000	LUMP SUM	. CONSTRUCTION SERVICES FEE	XXX	LUMP SUM	_____	_____	_____
1003 100000	LUMP SUM	. DESIGN AND PRECONSTRUCTION SERVICES FEE	XXX	LUMP SUM	_____	_____	_____
					_____	_____	_____
					_____	_____	_____
					_____	_____	_____

END OF CATEGORY NO. 1

STATE CONTRACT - MO0695172
 FEDERAL CONTRACT - N/A

SCHEDULE OF PRICES

ITEM NO. CCS NO.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEMS	SECTION	UNIT PRICE		AMOUNTS	
				DOLLARS	CENTS	DOLLARS	CENTS
		AGGREGATE AMOUNT AT UNIT PRICES ALTERNATE A IS USING BID 1001-1003		\$100,000,000	00	\$100,000,000	00
		THIS PROPOSAL SHALL BE FILLED IN BY THE PROPOSER WITH PRICES IN NUMERALS AND EXTENSIONS SHALL BE MADE BY HIM.					

STATE CONTRACT - MO0695172
 FEDERAL CONTRACT - N/A



BUY AMERICAN STEEL

The work under this proposal shall be in conformance with the Annotated Code of Maryland Article 21, Section 8-701 through 8-705 and Comar 21.11.02.

The bidder who elects to supply Domestic Steel Products need not complete this form.

However, the bidder who elects to supply steel of Foreign Manufacture must complete this form. When steel of Foreign Manufacture is proposed, the Contractor must include the costs of Domestic Steel.

American Steel must be utilized if the total cost of Domestic Steel (D) is less than the amount of a twenty percent (20%) increase to the total cost of Foreign Steel (F).

In reference to Section 21.11.02:

- A.)** Buy American Steel if the total cost of Domestic Steel (D) is less than the amount of a twenty percent (20%) increase to the total cost of Foreign Steel (F).

total cost (D) $1.2 \times$ total cost (F)

- B.)** In a Substantial Labor Surplus Area, Buy American Steel if the total cost of Domestic Steel (D) is less than the amount of a thirty percent (30%) increase to the total cost of Foreign Steel (F).

total cost (D) $1.3 \times$ total cost (F)

Structural Steel Items

Category	Item No. _____	Description _____	
		Domestic	Foreign
Costs:	Furnishing	_____	_____
	Erection/Placement	_____	_____
	Inspection Cost	_____	_____
	Duties	_____	_____
	Transportation	_____	_____
	Other Costs	_____	_____
	Total Item Cost	_____	_____



CONTRACT PROVISIONS
PROPOSAL FORM PACKET — STATE

CONTRACT NO. MO0695172

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Structural Steel Items

	Domestic	Foreign
Costs: Furnishing	_____	_____
Erection/Placement	_____	_____
Inspection Cost	_____	_____
Duties	_____	_____
Transportation	_____	_____
Other Costs	_____	_____
 Total Item Cost	_____	_____

Structural Steel Items

	Domestic	Foreign
Costs: Furnishing	_____	_____
Erection/Placement	_____	_____
Inspection Cost	_____	_____
Duties	_____	_____
Transportation	_____	_____
Other Costs	_____	_____
 Total Item Cost	_____	_____

Other Than Structural Steel items

	Domestic	Foreign
Costs: Furnishing	_____	_____
Erection/Placement	_____	_____
Inspection Cost	_____	_____
Duties	_____	_____
Transportation	_____	_____
Other Costs	_____	_____
 Total Item Cost	_____	_____

Total Cost of All Steel Items D) _____ F) _____



BID/PROPOSAL AFFIDAVIT

- A. Each solicitation shall provide notice that the affidavit in §B of this regulation shall be completed and submitted to the procurement agency with the vendor's bid or offer.
- B. Mandatory Solicitation Addendum. The solicitation addendum shall be in substantially the same form as follows:

A. AUTHORITY

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, or on the basis of 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.



B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder 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 proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in 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.
- (5) 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.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES. THE UNDERSIGNED

Bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;



(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)—(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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



- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids 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; or
- (9) 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)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):



E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and 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):



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.



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. 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)



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-M) 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



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) _____

Member Signature Title 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



**MDOT MBE FORM A
STATE-FUNDED CONTRACTS
CERTIFIED MBE 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 not susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. MO0695172 , I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE).

- I have met the overall certified Minority Business Enterprise (MBE) participation goal of 25% and the following subgoals, if applicable:
 - 6% for African American-owned MBE firms
 - 0% for Hispanic American-owned MBE firms
 - 0% for Asian American-owned MBE firms
 - 9% for Women-owned MBE firms

I agree that these percentages of the total dollar amount of the Contract, for the MBE goal and subgoals (if any), will be performed by certified MBE firms as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

OR

- I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. 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 MBE firms will be used to accomplish the percentages of the total dollar amount of the Contract, for the MBE goal and subgoals (if any), as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

2. Additional MBE Documentation.

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 business days of receiving such notice:



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

- (a) Outreach Efforts Compliance Statement (MDOT MBE Form C - State-Funded Contracts);
- (b) Subcontractor Project Participation Statement (MDOT MBE Form D - State-Funded Contracts);
- (c) If waiver requested, MBE Waiver Request Documentation and Forms (MDOT MBE/DBE Form E – Good Faith Efforts Guidance and Documentation) per COMAR 21.11.03.11; 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 MBE participation goal and subgoals, if any.

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 that the proposal is not susceptible of being selected for award.

3. Information Provided to MBE firms.

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

4. Products and Services Provided by MBE firms.

I hereby affirm that the MBEs 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



MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
PAGE 1 OF 4

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.

PLEASE READ BEFORE COMPLETING THIS FORM

1. Please refer to the Maryland Department of Transportation (MDOT) MBE Directory at 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. Only those specific products and/or services for which a prime or subcontractor is a certified MBE in the MDOT Directory can be used for purposes of achieving the MBE participation goals.
2. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm (whether a prime or subcontractor) must be certified for that specific NAICS Code (“MBE” for State-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 MBE 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 an MBE firm is certified and eligible to receive MBE 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 MBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the MBE participation goals. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email at mbe@mdot.state.md.us.
4. Complete the Part 2 – MBE Participation Schedule for all certified MBE firms (including primes and subcontractors) being used to achieve the MBE participation goal and subgoals, if any.



MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
PAGE 2 OF 4

5. **MBE Prime Self-Performance.** When a certified MBE firm participates as a prime (independently or as part of a joint venture) on a contract, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own forces toward fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract. In order to receive credit for self-performance, an MBE prime must be (a) a certified MBE (see 1-3 above) and (b) listed in the Part 2 – MBE Participation Schedule with its certification number, the certification classification under which it will self-perform, and the percentage of the contract that can be counted as MBE self-performance. For the remaining portion of the overall goal and any subgoals, the MBE prime must also list, in the Part 2 – MBE Participation Schedule, other certified MBE firms used to meet those goals or, after making good faith efforts to obtain the participation of additional MBE firms, request a waiver. Note: A dually-certified MBE firm can use its own forces toward fulfilling **ONLY ONE** of the MBE subgoals for which it can be counted.
6. The Contractor's subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet an MBE 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 MBE Participation Schedule.
7. For each MBE firm that is being used as a supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the MBE participation goals:**
 - 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 MBE 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 MBE participation credit will be given for the supply of these products.
 - C. For purposes of achieving the MBE participation goal, you may count only the amount of any reasonable fee that the MBE 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 MBE Participation Schedule, please divide the amount



MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
PAGE 3 OF 4

of any reasonable fee that the MBE 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 MBE participation goal, you may count the total amount of the subcontract. For Column 3 of the MBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.
- E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the MBE 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 MBE 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 MBE 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.
8. For each MBE 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 MBE participation goals, 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%

9. **WARNING:** The percentage of MBE participation, computed using the percentage amounts determined per Column 3 for all of the MBE firms listed in Part 2, **MUST** at least equal the MBE participation goal and subgoals (if applicable) as set forth in MDOT MBE Form A – State-Funded Contracts for this solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), 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 attached Goal/Subgoal Worksheet to assist you in calculating the percentages and confirming that you have met the applicable MBE participation goal and subgoals (if any).



MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
PAGE 4 OF 4
GOAL/SUBGOAL PARTICIPATION WORKSHEET

1. Complete the Part 2 – MBE Participation Schedule for each MBE being used to meet the MBE goal and any subgoals.
2. After completion of the Part 2 – MBE Participation Schedule, you may use the Goal/Subgoal Worksheet to calculate the total MBE participation commitment for the overall goal and any subgoals.
3. **MBE Overall Goal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the overall participation percentages determined in Line 3.3 for the MBE prime total.
4. **MBE Subgoal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the subgoal participation percentages determined in Line 3.3 for the MBE prime total.
5. The percentage amount for the MBE overall participation in the Total MBE Firm Participation Box F1 should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Overall Goal Participation Column of the Worksheet.
6. The percentage amount for the MBE subgoal participation in the Total MBE Firm Participation Box L should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Subgoal Participation Column of the Worksheet.

GOAL/SUBGOAL WORKSHEET		
MBE Classification	MBE Overall Goal Participation	MBE Subgoal Participation
(A) Total African American Firm Participation (Add percentages determined for African American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(B) Total Hispanic American Firm Participation (Add percentages determined for Hispanic American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(C) Total Asian American Firm Participation (Add percentages listed for Asian American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(D) Total Women-Owned Firm Participation (Add percentages determined for Women-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(E) Total for all other MBE Firms (Add percentages for firms listed as Other MBE Classification per Column 3 of the MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
Total MBE Firm Participation (Add total percentages determined for all MBE Firms in each column of the Worksheet)	(F1) _____ %	(F2) _____ %



**MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 2 – MBE PARTICIPATION SCHEDULE
PAGE __ OF __**

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.

Prime Contractor	Project Description	Solicitation Number

LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.



CONTRACT PROVISIONS
PROPOSAL FORM PACKET — STATE

CONTRACT NO. MO0695172

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COLUMN 1	COLUMN 2	COLUMN 3 Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal and subgoals (if applicable) set forth in Form A.
<p>NAME OF MBE PRIME OR MBE SUBCONTRACTOR OR AND TIER</p>	<p>CERTIFICATION NO. AND MBE CLASSIFICATION</p>	<p>FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUBGOALS, refer to Sections 5 through 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 MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3.</p>
<p>MBE Name:</p> <hr/> <p><input type="checkbox"/> Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate.</p> <p><input type="checkbox"/> Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C.</p> <p><input type="checkbox"/> Check here if MBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 6 of Part 1 - Instructions</p>	<p>Certification Number:</p> <hr/> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <hr/>	<p>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></p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.2 <u>TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE 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 7(E) IN PART 1 - INSTRUCTIONS).</u></p> <p>_____ % Total percentage of Supplies/Products</p> <p>x _____ 60% (60% Rule)</p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.3. <u>TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE).</u></p> <p>(a) _____ % Total percentage for self-performed items of work in which MBE is certified)</p> <p>(b) _____ % (Insert 50% of MBE overall goal)</p> <p>(c) _____ % (Insert subgoal for classification checked in Column 2, if applicable)</p> <p>Percentages for purposes of calculating achievement of MBE Participation goals:</p> <p>➔ For MBE Overall goal – Use lesser of (a) or (b)</p> <p>➔ For MBE Subgoal – Use lesser of (a) or (c)</p> <p>➔ If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.</p>

Check here if Continuation Sheets are attached.



MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 2 – MBE PARTICIPATION SCHEDULE
CONTINUATION SHEET
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Prime Contractor	Project Description	Solicitation Number

LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.



CONTRACT PROVISIONS
PROPOSAL FORM PACKET — STATE

CONTRACT NO. MO0695172

COLUMN 1	COLUMN 2	COLUMN 3 Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal and subgoals (if applicable) set forth in Form A.
<p>NAME OF MBE PRIME OR MBE SUBCONTRACTOR OR AND TIER</p>	<p>CERTIFICATION NO. AND MBE CLASSIFICATION</p>	<p>FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUBGOALS, refer to Sections 5 through 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 MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3.</p>
<p>MBE Name:</p> <hr/> <p><input type="checkbox"/> Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate.</p> <p><input type="checkbox"/> Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C.</p> <p><input type="checkbox"/> Check here if MBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 6 of Part 1 - Instructions</p>	<p>Certification Number:</p> <hr/> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <hr/>	<p>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></p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.2 <u>TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE 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 7(E) IN PART 1 - INSTRUCTIONS).</u></p> <p>_____ % Total percentage of Supplies/Products</p> <p>x _____ 60% (60% Rule)</p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.3. <u>TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE).</u></p> <p>(a) _____ % Total percentage for self-performed items of work in which MBE is certified)</p> <p>(b) _____ % (Insert 50% of MBE overall goal)</p> <p>(c) _____ % (Insert subgoal for classification checked in Column 2, if applicable)</p> <p>Percentages for purposes of calculating achievement of MBE Participation goals:</p> <p>➔ For MBE Overall goal – Use lesser of (a) or (b)</p> <p>➔ For MBE Subgoal – Use lesser of (a) or (c)</p> <p>➔ If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.</p>

Check here if Continuation Sheets are attached.



**MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 3 – CERTIFICATION FOR MBE PARTICIPATION SCHEDULE**

**PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL
AS DIRECTED IN THE INVITATION TO BID/ REQUEST FOR PROPOSALS.**

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 MBE Directory for each of the MBE firms listed in Part 2 of this MBE Form B for purposes of achieving the MBE participation goals and subgoals that were identified in the MBE Form A that I submitted with this solicitation, and that the MBE 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 MBE Form B.

The undersigned Prime Contractor hereby certifies and agrees that they have 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 MBE 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



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.



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 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;



CONTRACT PROVISIONS
PROPOSAL FORM PACKET — STATE

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(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 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;

(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.

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 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 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.



**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.¹ 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

¹ 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.



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**

PAGE __ OF __

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.



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

PART 4 – IDENTIFIED MBE/DBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

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
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/> —		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE/DBE <input type="checkbox"/> Used Non-MBE/DBE <input type="checkbox"/> Self-performing
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/> —		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE/DBE <input type="checkbox"/> Used Non-MBE/DBE <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.



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

PART 5 – ADDITIONAL INFORMATION REGARDING REJECTED MBE/DBE QUOTES

PAGE __ OF __

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.



INFORMATION REQUIRED TO BE SUBMITTED FOR STRAIGHT STATE CONTRACTS:

(a) Each bidder shall provide the following information:

NAME OF FIRM: _____

Street and/or P.O. Box

City

State

Zip Code

____ MBE ____ Non-MBE 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

43

____ MBE ____ Non-MBE 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

____ MBE ____ Non-MBE 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
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NAME OF FIRM: _____

Street and/or P.O. Box

City

State

Zip Code

____ MBE ____ Non-MBE 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

____ MBE ____ Non-MBE 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

____ MBE ____ Non-MBE 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 40A of 43, 40B of 43, 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



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

_____ (calendar date) (To Be Completed By Proposer)

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 Design and Preconstruction Services. Amount will be set for each construction package.

will be assessed for unauthorized extensions beyond the contracted time of completion.

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:

- (1) A bond in a form satisfactory to the State underwritten by a company licensed to issue bonds in this State;
- (2) A bank certified check, bank cashier's check, bank treasurer's check, or cash;
- (3) Pledge of security backed by the full faith and credit of the United States government or bonds issued by the State of Maryland.

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 Guarantee (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 or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall 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. As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, 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 is 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.

Appendix – Stipend Agreement

STIPEND AGREEMENT

Contract No. MO0695172

Description: IS 270 – Innovative Congestion Management Contract

THIS STIPEND AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of _____, 201_, by and between the STATE OF MARYLAND, acting by and through the Maryland Department of Transportation, State Highway Administration (the "SHA"), and _____ ("Proposer"), with reference to the following facts:

A. On June 7, 2016, the SHA issued a Request for Proposals (“RFP”) for design and construction of the IS 270 – Innovative Congestion Management Design-Build Project (“Project”), pursuant to procurement authority granted in State Finance and Procurement Article of the Annotated Code of Maryland and the Code of Maryland Regulations (“COMAR”), Title 21. The Project will be owned and operated by the State Highway Administration (SHA or Administration), which owns all non-tolled state highways and bridges in the State of Maryland (“State”). The Administration is responsible for administration of design and construction of the Project.

B. The RFP requires each Proposer to complete and deliver a Stipend Agreement to the SHA within the time frame noted below in 2.2 (a).

NOW, THEREFORE, Proposer hereby agrees as follows:

1. Work Product.

1.1 The SHA hereby retains Proposer to prepare and submit, in response to the RFP a price proposal that conforms in all material respects to the requirements of the RFP, as determined by the SHA, are timely received by the SHA, and satisfy the provisions set forth in the RFP.

1.2 All work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire, and the Work Product (as defined below) shall become the property of the SHA without restriction or limitation on its use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

1.3 Proposer agrees that all Work Product is, upon receipt by the SHA, the property of the SHA. The term “Work Product” shall mean all submittals made by Proposer during the RFP process, including the Proposal, exchanges of information during the pre-proposal and post-proposal period. However, the term “Work Product” shall specifically exclude patented rights in previously existing proprietary technology.

1.4 In consideration for the SHA’s agreement to make payment hereunder, Proposer agrees that the SHA shall be entitled to use all Work Product, without any further compensation or consideration to the Proposer, in connection with the RFP, the Contract Documents, the Project and future procurements by the SHA. Notwithstanding the foregoing, SHA

- 1.5 shall not be entitled to use information submitted by Proposer to the SHA in which the SHA determines is exempt from disclosure under the Maryland Public Information Act (“PIA”), Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland, unless the RFP otherwise provides.
- 1.6 The SHA acknowledges that the use of any of the Work Product by the SHA or the Design-Builder is at the sole risk and discretion of the SHA and the Design-Builder, and shall in no way be deemed to confer liability on the unsuccessful Proposer.

2. Compensation And Payment.

2.1 Compensation payable to Proposer for the Work Product described herein shall be \$750,000.00 if any of the following conditions are met:

- (a) The Proposer was in the competitive range and was not the most advantageous to the State or was not selected for award;
- (b) The Proposer was selected for award, but the Contract was not executed or it was terminated by SHA for its convenience prior to issuance of a notice to proceed for events outside the control of the Design-Builder and the Design-Builder is not seeking reimbursement for design activities undertaken after notice of selection;



- (c) The Proposer was not in the competitive range, but it submitted an Proposed Technical Concept (PTC) approved by the Administration and that the Administration wishes to utilize the PTC in the final design.

2.2 In its sole discretion, the SHA may pay compensation to Proposer, in an amount to be determined by the SHA, for the Work Product described herein under the following conditions:

- (a) For any Proposer meeting the criteria identified in Section 2.1, above.



Any amount paid under this subparagraph (a) will not exceed \$750,000.00 and will be subject to audit of the costs incurred by the Proposer in preparing its Technical Proposal and Price Proposal. Auditors shall have access to all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred. Failure of the Proposer or its team members to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditors access to the books and records of Proposer and its team members shall constitute a waiver of the right to be paid a stipend and shall bar any recovery hereunder.

Any Proposer wishing to apply for a stipend under this subparagraph (a) shall submit the completed Agreement to the SHA concurrently with the price proposals being submitted. Eligibility of receipt of a stipend is dependent upon

meeting the conditions set forth in Section 2.1. of this Agreement and TC Section 2.13 of the RFP.

- (b) If the procurement is cancelled prior to the Proposal Due Date, Proposers will be provided the opportunity, at their option, of delivering to the SHA the Work Product of their Proposal preparations to date. There is no specific format required for such Work Product. Those Proposers that choose to deliver their Work Product may be paid an amount that the SHA deems to be appropriate consideration for the Work Product. No portion of the stipend amount will be paid in the event a Proposer chooses not to deliver its Work Product. Any amount paid under this subparagraph (b) will not exceed the amount identified in Section 2.1 and will be subject to the audit criteria in Section 2.2 (a).

2.3 Any payment of compensation owing hereunder will be made (i) within 30 days after receipt of a proper invoice submitted to the SHA under this Section 2.3 or (ii) if an award is made. Such invoice and supporting engineering work shall not be submitted until one business day after the earlier to occur of (a) notice by SHA that award of contract has occurred, or (b) cancellation of the procurement. **Invoices must be received within 30 days of said notification by SHA to be honored for payment.**

3. Indemnities.

3.1 Subject to the limitations contained in Section 3.2, Proposer shall indemnify, protect and hold harmless the SHA and its directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or subcontractors or breach of any of Proposer's obligations under this Agreement.

3.2 This indemnity shall not apply with respect to any claims, demands or suits arising from use of the Work Product by the SHA or its contractors.

4. Compliance With Laws.

4.1 Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work performed or paid for under this Agreement and covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

4.2 The Proposer 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) in any subcontract except a

4.3 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.

5. Assignment.

Proposer shall not assign this Agreement without the SHA's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

6. Miscellaneous.

6.1 Proposer and the SHA agree that Proposer, its team members, and their respective employees are not agents of the SHA as a result of this Agreement.

6.2 All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.

6.3 This Agreement, together with the RFP, as amended from time to time, the provisions of which are incorporated herein by reference, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.

6.4 It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Maryland, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.

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

6.6 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Maryland State Highway Administration

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

STATE OF MARYLAND by STATE HIGHWAY ADMINISTRATION

WITNESS/ATTEST:

Approved for Execution:

Authorized Signature

Director, Office of Highway Development

Date: _____

Approved as to form and legal sufficiency:

Assistant Attorney General

Maryland State Highway Administration

[Signature for Corporations/LLCs]

WITNESS/ATTEST:

Proposer Name

By _____ (Seal)

Title: _____

Printed Name

Printed Name

Federal ID # or Social Security #