MARYLAND DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY ADMINISTRATION

PROJECT NUMBER – HA3345171
FAP NUMBER – Pending

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

August 20, 2013

MD 24 - Section A, from Deer Creek Bridge to 1,800 feet South of the bridge; and Section G, from 900 feet South of Sharon Road to 1,700 feet North of Ferncliff Lane

Harford County

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 Contractor for a Construction Management at Risk (CMAR) contract as defined in the Code of Maryland Regulations (COMAR) 21.05.10. The contract will be procured using the "Competitive Sealed Proposals" procurement method as defined in COMAR 21.05.03.

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

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

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

- Provision of information on Constructability, staging, and other Design input.
- The skills and knowledge to estimate the quantities of materials, labor, and equipment needed for Construction.
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the project and estimate costs, duration, and sequence of these tasks.
- An understanding of the availability, cost, and capacities of material, labor, and equipment.
- Experience with work in environmentally sensitive areas and experience with similar structure types under consideration for this project.
- The skills and knowledge to identify potential risks (including financial risks) and methods to mitigate them during the Design process.
- The skills to work collaboratively with SHA, the Designer, and the project stakeholders throughout the Design and Construction process.

- A Contractor who shall provide SHA with a preliminary estimating model for estimating project costs. The accepted estimating model will serve as a basis for all Opinion of Probable Construction Cost (OPCC) estimates in the program and development of the Guaranteed Maximum Price (GMP) at agreed upon Design milestones.

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

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

If the Contractor is awarded the fixed price Construction contract, their role will be to construct the project within the GMP and propose solutions that will help achieve the

goal of staying within the budget. If the project cannot be delivered within the budget, SHA retains the right to cancel the project, reduce the scope, or deliver the project by other means. If SHA chooses to deliver the project by other means, the selected Contractor **will not** be permitted to submit a bid.

Early procurement or Construction work may be considered for acquisition of long lead items or to complete early Construction tasks that can be completed and turned over to another Contractor, should a GMP for final Construction not be agreed upon. Early utility or Construction work may be considered with the understanding that early phases are not a guarantee of selection for final Construction. Early phases must be independent and severable from the final Construction package, with a well-defined end point. Construction will not begin until a GMP has been accepted for a substantially complete PS&E package.

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

All Construction work for this project shall be in accordance with the 2008 Standard Specifications for Construction and Materials, project specific Special Provisions, the "standard" Special Provisions, the Special Provisions Inserts, and all provisions included in the RFP's appendix.

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

B. Independent Cost Estimator

An independent party hired by the Administration to prepare a series of detailed estimates. These estimates will be performed independent of the Contractor and the Administration's Design team and will be used as a basis for cost comparison to the Opinion of Probable Construction Cost and the Guaranteed Maximum Price.

C. Opinion of Probable Construction Cost

The Opinion of Probable Construction Cost (OPCC) is the actual Construction cost to the Contractor to build all aspects of a Plans, Specifications, and Estimate package. These are required at established milestones for each phase, procurement, or Construction package.

D. Guaranteed Maximum Price

The Guaranteed Maximum Price (GMP) is the total itemized dollar amount agreed upon between the Contractor and the Administration for the Cost of Construction of the project excluding the fee for Preconstruction services. It shall include all permitting, Construction, labor, equipment and materials and all incidentals

necessary to complete the Construction of this project.

The GMP amount that will be incorporated into the Construction contract amendment will be agreed to between SHA and the Contractor. A GMP is the sum of the Cost of Construction for a sufficient Plans, Specifications, and Estimates bid package. The Cost of Construction will be agreed upon with pay items and assumptions. Payment for the Construction of the project will be paid through a Schedule of Prices items as per the Standard Specifications for Construction and Materials.

SHA anticipates initiating GMPs based on 80% or greater complete contract documents and intends to establish a GMP after a NEPA decision document has been signed. Separate NEPA decision documents are expected for Section A and Section G. The SHA's intention is to enter into separate GMPs for each section. Multiple sections, phases, or Construction package GMPs may be developed and accepted during the Design and Construction phases of this project. SHA reserves the right not to award any parts(s) or all of the Construction Services, and bid/award some or all of the Construction work separately. The selected proposer shall deliver to SHA a proposed GMP and GMP Supporting Documents at any appropriate milestones identified at the Project Scoping Workshop for an appropriate Long Lead Time Procurement (LLTP) or Construction phase.

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

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

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

II. Scope of this RFP for CMAR Services Selection

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

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

- Review all as-builts, conceptual Design, and site conditions.
- Attend the Project Scoping/Partnering Workshop, Project Team Meetings, Milestone Meetings, Long Lead Time Procurement (LLTP) GMP or Construction GMP reconciliation meetings with the Project team as agreed at the Project Scoping/Partnering Workshop.
- Formulate and evaluate alternative designs, systems, and materials.
- Provide input on accelerated Construction techniques.
- Provide Constructability input into the retaining wall types under consideration.
- Provide cost estimates of the alternatives to be evaluated that shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. The Contractor shall develop the OPCC on the designs prepared by the Designer at the completion of any agreed upon Milestone.
- Evaluate the alternatives on the basis of costs, Construction schedules, availability of labor, equipment, and materials, and Construction feasibility in the form of Constructability Reports.
- Prepare written procurement reviews for materials that could be procured by the Administration or the Contractor ahead of any Construction Phase.
- Prepare written reports at the end of any Design Milestone summarizing the Value Analysis activities accomplished and any recommendations developed within each phase.
- If OPCCs and/or bids received for the Work contained in any Bid Package cause the anticipated cost of the Work to exceed the then current OPCC, any LLTP GMP, any Construction GMP or Schedule of Prices Items, the Contractor shall, at no additional cost to the Administration unless caused by an increase in the Contractor's Work requested by the Administration, provide additional Value Analysis services in conjunction with any and all appropriate

items in the OPCC, any LLTP GMP, any Construction GMP and/or Schedule of Prices Items for the Work.

- Lead Value Analysis workshop(s) at agreed upon Milestones to coordinate estimating tasks, bring multidiscipline cost/Construction experts to evaluate alternative designs, systems, and materials. This Work includes the submittal and ongoing evaluation of Value Analysis Proposals, if required.
- Develop and document a Contracting Plan to meet DBE contract goals on all Construction phases.
- Compliance with COMAR 21.05.10.05
- Prepare preliminary Construction schedules and phasing alternatives.
- Collaborate with the Project Team to develop a Risk Management Plan, perform risk assessments, and prepare and update a Risk Register.
- Collaborate with the Project Team to develop an Innovation Tracking and Performance Report.
- Develop a Quality Control Plan, a Material Sourcing Plan, and a Worker and Public Safety Plan.
- Coordinate with SHA and the Designer throughout the Preconstruction phase through a combination of on-site meetings, Design meetings, conference calls, and workshops.
- Participate with SHA and the Designer in the Stakeholder outreach program. This will include meetings with environmental agencies, local stakeholder groups, adjacent property owners, utility companies, and the public.

III. Scope of Work

A. Project Description

Maryland 24 (Rocks Road) is a major rural highway located in Harford County. This roadway is a link to Pennsylvania from Harford County, and is used mainly by commuters, school buses, delivery trucks and park recreational users. Over the past several years, Deer Creek, which parallels MD 24 from Stirrup Run culvert to the Deer Creek Bridge, has gradually eroded its embankment which supports the MD 24 roadbed. In 2003, the Maryland State Highway Administration (SHA) completed a study which examined the supporting slope of MD 24 adjacent to Deer Creek. Seven distinct sections were identified with varying degrees of slope failure. The northern section, Section A, from Deer Creek Bridge to 1,800 feet south of that bridge, and the southern section, Section G, from 900 feet south of Sharon Road to 1,700 feet north of Ferncliff Lane, have the most severe erosion conditions and are most in need of repair. The SHA has initiated Design activities

for these two priority sections. The purpose of the project is to improve the road safety by remediating the slope supporting MD 24, repairing the pavement, improving roadway drainage, and addressing roadside safety concerns.

Section A is located within the Rock State Park and Section G is at the south end of the Park. Deer Creek is classified as a wild and scenic river and designated as Use III – P stream in Maryland. The existing road is an undivided, two-lane roadway with 10 to 12 foot lanes and no shoulders in both sections. The current posted speed from Section G to Section A is 25 mph. The terrain is rolling, with rock slopes on the west side of roadway. Drainage along the roadway is inadequate.

The existing conditions of Deer Creek through the Section A and Section G were found to be incised and degraded with areas of local instability. Two areas of encroachment zone were identified on the roadway embankment/stream bank within Section A. At these locations, it appears that a significant portion of the roadway embankment/stream bank is in the process of eroding due to the combination of groundwater piping and Deer Creek's flood flow hydraulic forces.

In Section G, the Deer Creek channel is in the process of actively migrating into the western hillside along MD 24 northbound lane. Two areas of concerns for the potential roadway embankment failure were identified within this Section. Similar to Section A, groundwater piping was observed throughout Section G along the road embankment. A thick accumulate of fine-grained sediment was observed at the toe of slope and completely washed away after a major storm.

During the preliminary Design of these two sections, SHA has worked closely with federal and state environmental agencies including the Maryland Department of the Environment (MDE), U.S. Army Corps of Engineers (USACOE), U.S. Fish and Wildlife Service (USFWS), and the Maryland Department of Natural Resources (DNR). In February 2010, an Advisory Committee was established for the project in order to better coordinate with the stakeholders, address the concerns raised by the public and environmental agencies, and to develop a mutually agreeable Design concept which accomplishes the project goals. The Committee board consists of state and local elected officials, the federal and state environmental agencies mentioned above, SHA representatives and area residents. From 2010 to the present, eight committee meetings have been held.

Section A Design

In late 2011, the committee selected the Design concept for Section A, maintaining the existing road alignment and stabilizing the stream slope with two imbricated stone walls. The road will be reconstructed where the proposed retaining walls are located and resurfaced everywhere else within the project limits. The project also proposes to improve the roadside drainage facilities

wherever feasible and re-grade the parking area at the southern end of the project to reduce the frequency of the flooding. At the toe of the imbricated walls, a vegetated bench with big boulders and native vegetation will be installed to stabilize the stream bank and enhance the stream habitat features. The Design of Section A is approximately 75% complete. As the Design moves forward, on-going coordination will be required with the various stakeholders.

The subsurface investigation indicated the depth of the unweathered rock varies from 5-17 feet. Constructing the stone walls and the foundation will be challenging. A temporary stream diversion will be necessary to provide a work area. Deer Creek base flow surface water elevation is shallow but rises up quickly in storms. Selecting a proper temporary diversion method and controlling the debris and Construction materials washing downstream will be critical to receive permit approval from the environmental agencies.

The project is located within the 100-year floodplain. The overall goal of the Design is to prevent increased flooding beyond the existing conditions. The proposed Design concept will cause a negligible increase in the 100-year floodplain. The work will continue to reduce the current proposed flood levels.

The aesthetics of the imbricated wall Design are one of the major concerns from the advisory committee. The stone selection will not only be for the structure stabilization, but to match the historical and environmental characteristics in this area. A random stone pattern is preferred on the face of the wall if feasible.

Due to the lack of work space, SHA has proposed to close MD 24 during Construction. As mentioned above, MD 24 is used for commuters, park users and school buses. Minimizing the road closure period will be encouraged in order to reduce the impacts to the traveling public.

Section G Design

Three Design alternatives have been presented; however, no Design option has been selected at this time. Option 1 maintains the existing road alignment and constructs a retaining wall to stabilize the slope. Due to the height and the steepness of the existing embankment, imbricated stone walls may not be a prudent option in Section G. Option 2 proposes to shift the road away from the stream, which provides space for constructing a slope. This shift would result in rock excavation at the northern end of this section and removing the existing masonry stone wall along the west side of the road. Option 3 maintains the existing roadway alignment and shifts the stream to the east. A 2:1 slope and possible bench will be constructed near the stream and extensive grading on both sides of stream will be required. In addition to similar Constructability issues and aesthetics requirements as in Section A, there are four residential properties

within the Section G limits. Access to those properties must be provided during Construction and/or road closure.

B. Project Goals

The project is intended to produce the following improvements:

1. Maximize safety of workers, the traveling public, and other users of the area.
2. Minimize impacts to the physical environment (e.g. parkland, forests, streams, etc.).
3. Minimize inconvenience and impacts to the traveling public and other users of the area.
4. Facilitate a collaborative partnership with all members of the project team and stakeholders.
5. Project completion on budget and on schedule.
6. Provide high quality Design input and Construction product.
7. Provide an aesthetically pleasing and context sensitive project.
8. Engage in meaningful risk and cost model discussions with the project team.
9. To ensure equal opportunity and non-discrimination throughout the project.
10. To develop opportunities for and integrate small and disadvantaged businesses on the project.

C. Project Key Issues

Schedule

- No stream disturbance will be permitted during the stream restriction time from March 1 to May 31.
- The SHA expects to complete the Design for Section A to meet a desired Construction notice to proceed date of May 15, 2014 with Construction completion desired within 6 months or less.
- Design for Section G is not intended to begin until a GMP has been agreed upon for Section A. Section G is not currently funded for Construction. An anticipated Construction schedule and duration is needed to facilitate Construction funding identification. For the purposes of estimating Preconstruction services, the Contractor should assume Construction will begin by May 2015.

Budget/Quality

- Safety for the Contractor, motorists, and other users. In addition to normal roadway and Construction safety issues, these sites will have limited work space and Section A is located within the Rocks State Park, a popular place for hiking, picnicking, canoeing, tubing and etc.
- Compliance with project environmental document/permits.
- Develop strategies to identify and mitigate project risks.

Maintenance of Stream Flow

- Minimize the impacts to the stream due to Construction activities. The maintenance of stream flow Design will be approved as part of the joint permit application prior to Construction notice to proceed.
- Minimize the impacts to the stream habitats in Deer Creek within the project reach.
- Monitor and control debris and sediment washing downstream after rain events.

Maintenance of Traffic

- Coordinate road closure time with Board of Education of Harford County Public Schools to minimize the impacts to the school buses on this route.
- Coordinate the road closure time with DNR-Park Services.
- While working in Section G, ingress/egress access points need to be coordinated and maintained at all times for the local traffic.

On-going Coordination with Stakeholders

- Meet with Advisory Committee on a periodic basis to seek feedback for Construction details and progress.

D. Services to be provided by the Contractor

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

- Attendance and participation in initial workshop
- Project site visit and inspection
- Identify project risks and mitigation measures
- Develop project schedule and tasks
- Analysis of project and Construction phasing
- Determine possible early delivery and long lead time items
- Attendance in project progress meetings, milestone meetings, stakeholder meetings, and advisory committee meetings
- Providing progress reports on a monthly basis
- Coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners
- Development of project innovations
- Development of Construction cost model
- Develop and calculate quantities
- Develop DBE and Subcontractor plan
- Constructability reviews and reports at milestones
- Provide input on materials availability
- Develop Construction phasing plan

- Value Analysis Proposals
- Cost savings reviews
- Develop, update, and revise preliminary Construction schedule
- Develop Construction cost estimates at each milestone
- Notify SHA at what point GMP proposals can be prepared
- Prepare and submit GMP proposals
- Provide cost model and assumptions
- Reconcile Final GMP for each phase

E. Services to be provided by the Administration

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

- Scheduling, facilitation, attendance and participation in initial workshop
- Identify project risks and mitigation measures
- Environmental Document review and preparation
- Develop project schedule and tasks
- Identify Design criteria and provide Design services
- Analysis of project and Construction phasing
- Scheduling and facilitating project progress meetings, milestone meetings, stakeholder meetings and advisory committee meetings
- Project management services
- Coordination with third parties including, but not limited to, utility companies, environmental permitting agencies, and property owners.
- Identify Construction requirements
- Development of project innovations
- Provide Construction plans and specifications
- Develop and calculate quantities
- Develop Construction phasing plan
- Cost savings reviews
- Provide input into preliminary Construction schedule
- Acquisition of Environmental Permits
- Acquisition of Right-of-Way
- Review Construction GMP proposals and compare to Engineer's Estimate and ICE
- Reconcile Final GMP for each phase

G. RFP Package

SHA will make available any pertinent documents which may include preliminary Design sets, site reviews, geotechnical reports, environmental documents, Right-of-Way, survey, etc. Copies of these documents and electronic files may be

obtained from the SHA Projectwise at the following location: (pw\\SHAVMPWX:SHAEDMS01\Documents\CMAR Projects\HA3345171) and includes the following information:

1. Copy of this RFP
2. Supplemental Information
    a. Conceptual Design Plans
    b. Soil Survey Boring Logs
    c. Soils Laboratory Test Results
    d. Summary of Topsoil Results
    e. Right-of-Way Plats
    f. Hydrology and Hydraulics Study Reports
    g. Detailed Geomorphology Study Reports
3. Information Forms (.doc files)
    a. Key Staff Information (Form A-1)
    b. Past Project Description (Form A-2)

IV. CMAR Process for Construction

A. Designer and Contractor Design Project

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

B. Contractor Submits Bid for Project (Early Procurement)

The Contractor 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 also procure through the Contractor such services such as pavement cores or other investigations to facilitate the Design. The Administration may choose to exercise this option if the early procurement saves

significant Construction time, money, or avoids potential delays once the project begins.

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

- The Contractor shall prepare a bid to supply the item(s), including all other costs associated with the procurement (such as transportation, storage, etc.). This bid is only for purchased items and should not include mobilization for Construction or other unrelated costs.
- The Contractor shall submit a sealed bid to the Administration. The Administration will secure an independent cost estimate for the item(s). Upon opening the Contractor's bid, the Administration will determine the acceptability of the bid by comparing it to state averages, similar projects, the independent cost estimate, and the engineer's estimate. For each bid item, the Administration will evaluate if the GMP, Engineer's Estimate, and the ICE were within 10%.

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

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

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

C. Contractor Submits Bid for Project (Early Construction Contract)

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

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

- The Administration and the Contractor will agree upon a scope of work to accomplish this phase of the contract. The agreement may take the form of a set of plans or it may consist of something less formal such as sketches, drawings, or written descriptions. Both parties must agree that the scope of work is clear and unambiguous.
- SHA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
- The Contractor will prepare a bid to perform the agreed to scope of work. The bid will be based on the estimating model and the most recent OPCC for the agreed scope of work.
- The Contractor will submit a sealed bid to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Contractor's bid, the Administration will determine the acceptability of the bid by comparing it to state averages, similar projects, the independent cost estimate and the engineer's estimate. For each bid item, the team will evaluate if the GMP, Engineer's Estimate, and the ICE were within 10%.
- If the DBE goal is greater than zero, at the time of bid the Contractor will be required to submit commitments to DBE participants sufficient to meet the goal and/or demonstrate good faith efforts to meet the goal.

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

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

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

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

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

- The Designer will produce a set of plans and specifications showing all work

to be accomplished. The plans will also show all work 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 Contractor will prepare a bid to perform the work shown. The bid will be based on the estimating model and the most recent OPCC for the agreed scope of work.
- The Contractor will submit a sealed bid to the Administration. The Administration will secure an independent cost estimate for the work. Upon opening the Contractor's bid, the Administration will determine the acceptability of the bid by comparing it to state averages, similar projects, the independent cost estimate and the engineer's estimate. For each bid item, the team will evaluate if the GMP, Engineer's Estimate, and the ICE were within 10%.
- If the DBE goal is greater than zero, at the time of bid the Contractor will be required to submit commitments to DBE participants sufficient to meet the goal and/or demonstrate good faith efforts to meet the goal.

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

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

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

E. Contractor Builds Project

From this point forward, the work proceeds in the same manner as a Design-bid-build project as per the amended contract.

V. Rules of Contact

The Procurement Officer's Designee in this RFP, or a representative hereafter designated in writing by the Procurement Officer, is the Administration's single contact and source of information for this procurement.

The following rules of contact will apply during the Contract procurement process, which begins upon the submittal of the Technical Proposal and Price Proposal, and

will be completed with the execution of the Contract. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (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. After submission of Technical and Price Proposals, neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the PROJECT or the Proposals. However, a Proposer may communicate with a Subcontractor that is on both its team and another Proposer's team, provided that each Proposer has obtained a written certification from the Subcontractor that it will not act as a conduit of information between the teams.
3. Unless otherwise specifically authorized by the Procurement Officer, a Proposer may contact the Administration only through the Procurement Officer and only in letter format via e-mail and not orally. The Proposer's contacts with the Administration will be only through a single representative authorized to bind the Proposer.
4. The Procurement Officer normally will contact a Proposer in writing through the Proposer's designated representative.
5. Neither a Proposer nor its agents may contact Administration employees, including Administration heads, members of the evaluation committee(s) and any other person who will evaluate proposals, regarding the PROJECT, except through the process identified above.
6. Any contact by a Proposer determined to be improper may result in disqualification of the Proposer.
7. The Administration will not be responsible for or bound by: (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Procurement Officer.

VI. Requests for Information (RFI)

The Administration will consider questions submitted in writing by Proposers regarding the RFP, including requests for information and requests to correct errors. Project questions shall be submitted in 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:

Mr. Jason A. Ridgway
Director, Office of Highway Development
State Highway Administration
e-mail address: MD_24_CMAR_project@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. All responses shall be in writing and will be disseminated only by posting on SHA's website at www.roads.maryland.gov **under "Business Center", Contracts, Bids & Proposals, Click "Competitive Sealed Proposals" under "Construction Contracts".**

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

Only requests received by 4:00 p.m. Eastern Time on the date specified in **Section XX** 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 and posted sequentially on the SHA website. Multiple responses are anticipated. The last response will be posted no later than 5 calendar days prior to the RFP due date.

Responses to all RFI's not part of an addendum shall be considered contractually binding.

VII. RFP Addenda

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

VIII. Costs and Ownership of Documents

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

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

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

IX. Compliance with Applicable Laws

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

X. Restrictions on Participation

The State Ethics Commission administers the provisions of the State Ethics Law, including § 15-508 of the State Government Article that contains various restrictions on participating in State procurements. Any questions regarding eligibility must be appealed to the Commission.

No official or employee of the State of Maryland, as defined under State Government Article, §15-202, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Contractor or an entity that is a Subcontractor on this contract.

No official or employee of the Maryland Department of Transportation (MDOT), during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof, regardless of whether they participated in matters relating to this contract while in the employ of the MDOT.

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

XI. Proposer Submission Requirements

A. Responsibilities of the Proposers

Before submitting a proposal, the Prospective Proposer is responsible for examining the RFP and materials furnished to each prospective Contractor. The Contractor is responsible for all site investigation and work necessary to submit proposals and accept responsibility that their technical and price proposal is sufficient to complete all Preconstruction services and Construction items identified.

B. Duty to Notify if Errors Discovered

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

C. Pre-Proposal Meeting

A pre-proposal meeting will be held on September 4, 2013 at the 211 East Madison Street Building, Training Room 3, located in Baltimore, Maryland, 21202 from 1:30 p.m. – 2:30 p.m. This meeting will give an overall introduction to the project as scoped, and enable SHA to answer questions about the project and process. The SHA Project Management team for the project will be present.

D. Letter of Interest

A Letter of Interest (LOI), on official letterhead from the Contractor, notifying the Administration of the Contractor's interest in this RFP is requested to be delivered no later than **September 25, 2013 prior to 12 noon** (prevailing local time). The LOI must be delivered to the following email address:

MD_24_CMAR_project@sha.state.md.us

E. Proposer Delivery Formalities

1. Organization of Proposal Submittals

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

a. Separate Proposal Packages

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

b. Technical Proposal

The Technical Proposal may be submitted in 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

Project – Contract No.

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

Project – Contract No.

Container ____of _____

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

Technical Proposals and Price Proposals must be delivered no later than **October 2, 2013 prior to 12 noon** (prevailing local time). The proposal must be delivered to the following location:

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

e. Number of Copies

One original and eight (8) copies of the complete Technical Proposal shall be submitted along with one (1) electronic copy

PDF file on a CD or flash drive. A single original of the Price Proposal shall also be submitted.

2. Effect of Submitting Proposal

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

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

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

   b. The Proposer has given the Administration written notice of all errors, omissions, or discrepancies in the RFP in accordance with this RFP.

   c. The Proposer has determined that the RFP is generally sufficient to convey an understanding of all terms and conditions that could significantly impact the cost, timeliness, quality, or performance of the Work.

Price proposals are irrevocable for 180 days following the closing date for submission of price proposals or best and final offers, if requested.

3. Withdrawals and Resubmittals of Proposals

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

4. No Public Opening

   There will be no public opening of Proposals. After the Proposal Date, all Proposals will be opened in the presence of two or more Administration

employees and reviewed for completeness. A register of Proposals will be prepared that identifies each Proposer.

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

XII. Technical Proposals

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

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

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

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

A. Cover Letter
B. Project Management Team/Capability of the Proposer
C. Project Approach
D. Legal and Financial Information
E. 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.

- 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.

A. Cover Letter (Limit 2 Pages)

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

1. Provide the names and the roles of all participants.

2. Identify a single, primary point of contact for the Contractor with address, phone number, fax number, cell phone number, and E-mail address where all communications from the Administration should be directed for the proposal and evaluation phases and duration of the Contract. A secondary contact for the Contractor shall be included (with the above information) for use when the primary contact is not available. The primary and/or secondary contact must be available 24 hours a day for the duration of the Design and Construction activities and during normal business hours during the proposal and evaluation phases. **The Administration prefers that the primary and secondary points of contact are key staff members that will be directly involved during the proposal development, evaluation phase, Design and Construction stages.** In the event that the primary and secondary contacts are not assuming their responsibility until after the proposal and evaluation phases, the Contractor must identify the primary point of contact for the proposal and evaluation phases. At least one of the Key Staff members must be involved in all phases.

3. Include an affirmative declaration that to the best of each Participant's knowledge and belief, the information supplied by said Participant is true and accurate.

4. Include a declaration that each Participant company(s) are prepared to provide the necessary financial, material, equipment, labor and staff resources to perform the project.

5. Include a certification that the Contractor is in compliance with the general conditions prohibiting a former Administration employee from working on this contract for one year after leaving the Administration and 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.

6. Include a general authorization for the Administration to confirm all information contained in the Technical Proposal.

7. Include a declaration that all addenda have been received by the Proposer. The Proposer is alerted to their responsibility to confirm that all team members have received all addenda. The Proposer is solely responsible to ensure that their team has the correct information.

B. Project Management Team/Capability of the Proposer (Limit 15 Pages)

1. Project Management Team

   a. Provide a description of the composition of your project management team. If your team is a joint venture or association, indicate specific responsibilities of each member and firm of the team. Include narrative describing how the proposed Key Staff members will meet the stated project goals, including building a professional and collaborative project team and partnering with both the SHA and the Designer in the project development. Provide a narrative of the Proposer's safety programs and initiatives.

   b. Submit resumes providing job descriptions and responsibilities and authority for each working title. Identify and discuss the qualifications of the following Key Staff including providing qualifications and relevant experience, any unique knowledge relevant to the project, and their commitment and time availability for the project:

      1. Project Manager – This position shall have a minimum of fifteen (15) years experience and will be the overall Project Manager for the Preconstruction services and Construction services. The project manager is expected to be involved in the Preconstruction services and help with the continuity in the Construction phase. This person will be the main point of communication to the Project Team and shall be an employee of the prime Contractor or prime joint venture constituents.

      2. Construction Manager – This position shall have a minimum of ten (10) years experience in overall Construction management on similar types of projects.

Emphasize Construction management experience including highway Construction, drainage Construction, retaining wall Construction, maintenance of stream flow, environmental sensitivity, utility coordination and relocation, and maintenance of traffic.

3. Cost Estimator – This position shall have a minimum of ten (10) years experience as a Construction cost estimator with demonstrated experience in estimating highway projects that include excavation, drainage, retaining walls, paving, structural concrete, maintenance of stream flow, dewatering, maintenance of traffic and other elements similar to the scope of this project. This position will be involved during OPCCs, GMPs, and at key meetings where price, risk, and assumptions are discussed.

Resumes shall be a maximum of **one (1) page** each and shall follow Form A-1. Form A-1 is included as part of the maximum page limit for this section.

c. Provide a separate graphic organizational structure chart, complete with working titles for the project management team in both Design and Construction phases, and showing lines of communication.

d. Project Team Past Performance

1. Using Form A-2, Past Project Description, provide a listing of three (3) projects that highlight Construction experience relevant to this project, which the lead Contractor firm functioned as the lead Contractor firm on over the last ten (10) years. Projects should emphasize proposed Key Staff involvement, where feasible, to demonstrate the team's capability to perform work similar to that required for this contract. Provide detailed information why project completion dates or Construction costs were not met. Use one (1) form per project.

2. Environmental Past Performance - Discuss project specific techniques, products and practices you have incorporated into past projects that have resulted in the reduction of impacts to environmental features, or a reduction in waste or pollution. Identify if these techniques, products, or practices were owner directed or suggested by the Contractor. Describe the circumstances of and the actions

you have taken in past performance of work to correct any deficiencies related to measures to protect environmental resources or to address any environmental fines, stop work orders, or low ratings. Describe if and how these were addressed on the project and in future practices.

C. Project Approach (Limit 15 pages)

1. Project Goals

   a. Discuss the Proposer's understanding of the project goals listed in this RFP.

   b. Discuss the Proposer's approach to maximizing and attaining the project goals. In conjunction with your team's Project Approach, your team may have some innovative ideas that may or may not meet the requirements of this RFP that could increase the likelihood of success and help balance the project goals.

2. Project Approach

   Provide a strategic project approach summary. It should include:

   a. Discussion of your firm's approach in providing successful general contracting services based on prior experience and how it applies to meeting SHA's project objectives. Include specific examples of your firm's processes (estimates, progress reports, schedules, Constructability reviews, value analysis studies, forms, cost savings, plan reviews, general conditions budgets, organizational structures, quality control, etc.).

      Provide a description of the Construction work the Project Management Team has the capability to self-perform, including qualifications to do such, and to subcontract.

   b. Discuss your approach to fulfilling the commitments made during the project's environmental process and permitting. Describe your approach to implementing an effective erosion & sediment control plan and ensuring a proactive approach to maintaining functional erosion and sediment control.

   c. Propose a Construction approach and sequence that optimizes value to the project, with a realistic view of known constraints. Discuss factors that would affect schedule such as outside constraints, seasonal work, materials, equipment and labor availability, etc.

d. Identify other resources and capabilities. Describe additional unique resources and capabilities that your company will bring to the project and how these unique resources and capabilities will be beneficial in achieving project goals.

e. Discuss potential project challenges. Describe any project challenges that are anticipated by your company and how you plan mitigate the risk of these challenges.

f. Discuss your approach to safety during the Design and Construction phases that will keep the workers, traveling public and others safe.

g. Describe specific technical or production innovations related to Design or Construction that may further improve reaching project goals including impacts of the innovations on time, cost, and quality.

If your team is selected and awarded the contract, any innovations proposed will be expected to be used in Design unless the Administration determines they are not in the best interest of the project.

3. Risk and Innovation Management

a. The CMAR process is intended to eliminate or reduce risk and apply innovations. This will reduce the cost of Construction and provide the best value to the public. Discuss in your proposal the process you will use to eliminate, and/or mitigate risk and apply innovation during the Design phase. Discuss how you will track and report risk mitigation and innovative savings. Discuss how the Proposer will support the team during Preconstruction and Construction activities to achieve a favorable cost, including ways to bring the project costs down, and on a schedule that is better than traditional projects.

b. In the table below, identify the top 5 risks or innovation that the Proposer will help manage in Design and Construction. Identify projected cost or time savings. Do not include risk or innovation in the table that does not provide either a cost or schedule savings. In the second column for probable costs savings, identify what portion of the savings is Construction cost savings and what portion is user cost savings.

Risk or Innovation Description	Probable Cost Savings of Risk Mitigation or Innovation	Probability of Occurrence	Cost Savings to Project (Probable Cost Savings X Probability of Occurrence)	Schedule Impacts to Project (Days)	Summary of Implementation or Mitigation/Elimination plan

c. Identify any additional risk mitigation or innovation, which will improve the project approach and were not included in the table above. These risk mitigation or innovation may have little or no cost benefits but assists in achieving the goals of the project.

d. Discuss the Proposer's past performance in mitigating risks on previous Construction projects similar in size and complexity. Discuss how the past performance will benefit this project, particularly in regard to scope, schedule, budget, quality, etc.

D. Legal and Financial Information (No page limitation)

The structure of the Legal and Financial information shall include:

1. Bonding Capability: Provide evidence that the Contractor is capable of obtaining a Performance Bond and a Payment Bond in accordance with the requirements in Maryland's July 2008 Standard Specifications for Construction and Materials, GP – Section 3 and appropriate for the upper range of a Project Classification G as defined in Maryland's Standard Specifications for Construction and Materials, Section TC 2.01.

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

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

E. Appendix (No page limitation)

Copies of all addenda letters and responses to RFIs issued by the Administration shall be included in the Appendix.

XIII. Price Proposals

The SHA may deem a Price Proposal as non-responsive if, based on its review, the Administration determines the pricing to be unbalanced. The sealed Price Proposal has two sections.

A. Provide a Construction Cost for the items identified in the Price Proposal form based on the Design, specifications, and information provided. The items must be fully loaded to include direct cost, indirect costs, profit, overhead, and risk. Do not deduct savings identified in your Risk and Innovation Management table from your Technical Proposal. Risks and Innovations included in your Project Approach, but not identified in your Risk and Innovation Table, should be included in your Price Proposal.

   Your pricing for each item shall be based on the total cost of each item including, direct and indirect costs associated with the item, profit, and risk. The expectation is that the Proposer delivers the project at the proposed prices, or less, with possible adjustments for owner directed changes and quantity adjustments that may occur during Design. The items shall be priced considering the following:

   1. Maintenance of Traffic – Section A Only – Refer to Section 104 of the 2008 Standard Specifications for Construction and Materials
   2. Mobilization – Section A Only – Refer to Section 104 of the 2008 Standard Specifications for Construction and Materials
   3. Class 2 Excavation – Section A Only – Refer Section 201 of the 2008 Standard Specifications for Construction and Materials. Note that this is regardless the width of the bottom of the cut.
   4. Furnish and Install Imbricated Stone for Retaining Walls – Section A Only – Work will include all material, labor, equipment, tools and incidentals necessary to complete the work to furnish and install imbricated stone for retaining walls. It does not include work such as maintenance of stream flow, excavation, foundation concrete, or backfill.

B. CMAR Preconstruction Fee

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

phase services. A separate lump sum price shall be submitted for Section A and for Section G.

XIV. Evaluation of Proposals, Opening and Selection

A. Best Value Process

The Technical Proposal will be evaluated on responsiveness and the pass/fail and technical evaluation factors identified in Section XII. An evaluation committee (Committee) will determine the pass/fail status and overall technical rating of each Proposal. After evaluating the Price Proposal, the Committee will prepare a recommendation to the Procurement Officer indicating which Proposal is the most advantageous to the State (i.e., represents the best value). The Procurement Officer, together with the Selection Official designated by the Secretary of the Maryland Department of Transportation, will then assess the 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 Contractors submittal is the most advantageous to the State, **the Technical Proposal is significantly more important than the Price Proposal**.

B. Evaluation of Technical Proposals

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

- Project Management Team/Capability of the Proposer
- Project Approach

Project Management Team/Capability of the Proposer and Project Approach are considered equally important.

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 Contractor relative to this Project to perform as an integrated team. Each Proposal must be deemed responsive and achieve a rating of "Pass" on any "Pass/Fail" factor listed in Section XIII D to receive further consideration. Failure to be deemed responsive and achieve a "Pass" rating on any "Pass/Fail" factor will result in the Proposal being rated UNACCEPTABLE, the technical proposal and price proposal will not be rated and the Proposer will be disqualified.

- Legal & Financial Information

C. Completeness

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

D. Technical Proposal Evaluation Committee

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

E. Evaluation Process

Members of the Committee will evaluate elements of the Technical Proposals as listed in Section XII and Section XIV.

F. Evaluation Factors

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

EXCEPTIONAL – The Proposer has demonstrated an approach that is considered to significantly exceed stated objectives/requirements in beneficial way to the Administration. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Proposer would fail be meet the requirements of the solicitation. There are essentially no Weaknesses as defined below.

GOOD – The Proposer has demonstrated an approach that is considered to exceed stated objectives/requirements. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor.

ACCEPTABLE – The Proposer has demonstrated an approach that is considered to meet the stated objectives/requirements. This rating indicates an acceptable level of quality. The Proposer demonstrates a reasonable probability of success. Weaknesses are minor and can be corrected.

SUSCEPTIBLE TO BECOME ACCEPTABLE – The Proposer has demonstrated an approach that fails to meet stated criteria as there are weaknesses and/or deficiencies, but they are susceptible to correction through Discussions. The response is considered marginal in terms of the basic content and/or amount of information provided for evaluation, but overall the Proposer is capable of providing an acceptable or better Proposal.

UNACCEPTABLE – The Proposer has demonstrated an approach that indicates significant weaknesses/deficiencies and/or unacceptable quality. The Proposal fails to meet the stated criteria and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success. weaknesses/deficiencies are so major and/or extensive that a major revision to the Proposal would be necessary.

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.

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.

G. Evaluation of Price Proposals

Price evaluations will be performed based on the information outlined in Section XIII.

The Administration reserves the right to reject any Proposal if it determines that the Price Proposal is unacceptable, including a determination that the Proposal is significantly unbalanced or front end loaded to the potential detriment of the Administration.

An unbalanced Proposal is considered to be one (a) which is front-loaded or (b) for which the line item amounts or amounts shown in the Cost Breakdown do not reflect reasonable actual costs plus a reasonable proportionate share of the Proposer's

anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.

A Price Proposal shall be deemed unacceptable if the Administration determines, in its sole discretion that it fails to conform to the conditions of the RFP in any manner. A Price Proposal may be unacceptable if it:

1) Is significantly unbalanced relative to the scope of Work;

2) Does not provide all information in conformance with the RFP, and/or

3) Contains inaccurate, incomplete, and/or unreasonable prices on the Cost Breakdown

H. Communications

The Administration may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals. This process will be initiated by delivery of a written request form 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.

I. 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 or is deemed non-responsive;

B) A Proposal that, after the initial evaluation, is rated lower than "SUSCEPTIBLE TO BECOME ACCEPTABLE" for any technical evaluation factor or subfactor.

The Administration will determine the Competitive Range after a careful analysis of the Technical and Price Proposals. Proposals will not be excluded from further consideration if the Proposers have a reasonable chance of being placed in the

Competitive Range if meaningful discussions are conducted and appropriate improvements is achieved.

J. Discussions

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

1) Purpose

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

A) Advising the Proposers of weaknesses, significant weaknesses, and/or deficiencies in their Proposals (relative to the RFP);

B) Attempting to resolve any uncertainties and obtaining any significant additional understanding concerning the Proposal;

C) Resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or the evaluation process;

D) Providing the Proposers a reasonable opportunity to submit any further technical or other supplemental information to their Proposals;

E) Facilitating execution of a contract that is most advantageous to the State, taking into consideration the technical and price factors discussed above.

2) Procedures

The following specific procedures will apply to Discussions:

A) Discussions will only be conducted with Proposers in the Competitive Range. If Discussions are held, they will be held with all Proposers in the Competitive Range;

B) Information disclosed by Proposers in the Competitive Range during Discussions will not be made public until after execution of the Contract;

C) Discussions may be written and/or oral, and more than one round of Discussions may be conducted; and

D) No disclosure will be made of any information derived from a Proposal of, or from discussions with, another Proposer.

3) Prohibited Contact

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

A) Revealing a Proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a Proposer's intellectual property to another Proposer;

B) Revealing a Proposer's price without that Proposer's permission. However, the Administration may inform a Proposer that its price is considered by the Administration to be unbalanced based upon the Scope of Work and may provide information regarding the analysis supporting that conclusion;

C) Revealing the names of individuals providing references 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.

K. 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.

L. Determination of Successful Proposer

In accordance with COMAR 21.05.03.03(F), award of the Contract based on a determination of the Proposal that is the most advantageous to the State, taking into consideration the technical and price factors discussed above, provides the best opportunity to obtain the right Contractor to assure a successful Project.

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

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

XV. Protests

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

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

Time for Filing:

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

Any other protest shall be 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.
Bid or Contract number.
Reasons for protest.
Supporting exhibits, evidence or documents to support protest.

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

XVI. Rights and Disclaimers

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

1. Reject any or all Sealed Proposals;
2. Issue a new RFP;
3. Cancel, modify, or withdraw the RFP;
4. Issue addenda, supplements, and modifications to this RFP;
5. Modify the RFP process (with appropriate notice to Proposers);
6. Appoint an Evaluation Committee and evaluation teams to review Sealed Proposals,
7. Approve or disapprove substitutions and/or changes in Sealed Proposals;
8. Revise and modify, at any time before the RFP due date, the factors it will consider in evaluating Sealed Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Administration will provide an addendum setting forth the changes to the evaluation criteria or methodology. The Administration may extend the Sealed Proposals due date if such changes are deemed by the Administration, in its sole discretion, to be material and substantive;
9. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Sealed Proposals;
10. Waive weaknesses, informalities, and minor irregularities in Sealed Proposals;
11. Disqualify any team that changes its Sealed Proposals (following submittal) without Administration written approval;
12. Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
13. Refuse to receive or open a Sealed Proposal, once submitted, or reject a Sealed Proposal if such refusal or rejection is based upon, but not limited to, the following:
    i. Failure on the part of a Principal 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 Principal Participant under previous contracts with the Administration (or State);

iii. Unsatisfactory performance by the Proposer, a Principal Participant under previous contracts with the Administration (or State);

iv. Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant ;

v. Submittal by the Proposer of more than one Sealed Proposal in response to this RFP under the Proposer's own name or under a different name;

vi. Evidence of collusion in the preparation of a proposal or bid for any Administration Design or Construction contract by (a) the Proposer, Principal Participant 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 Principal Participant is responsible.

Administration Disclaimers:

The RFP does not commit the Administration to enter into a Contract, nor does it obligate the Administration to pay for any costs incurred in preparation and submission of the Sealed Proposals or in anticipation of a Contract. By submitting a Sealed Proposal, a Proposer disclaims any right to be paid for such costs.

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

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

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

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

Only MDOT certified MBEs can be utilized to achieve the Contract's DBE goal.

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

Small Business Enterprise

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

XVIII. Public Information Act Notice

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

XIX. Arrearages

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

XX. Proposed Procurement Schedule

Pre-Proposal Meeting	September 4, 2013
Final Date for Receipt of Proposer's Questions	September 17, 2013
Letter of Interest Due	September 25, 2013
Sealed Proposal Submittal to MSHA	October 2, 2013
Selection of Successful Proposer	November 2013

Appendix – Contract Provisions

NOTICE TO CONTRACTORS

Most SHA projects advertised for construction after July 1, 2012 were designed to follow the "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control". This project will be built using the 2011 version of these Standards and Specifications. These Standards and Specifications contain significant revisions to materials and methods compared to earlier versions. Perspective bidders are encouraged to consider the impacts of these changes when preparing their bids. These Standards and Specifications can be found on the internet at: http://www.roads.maryland.gov/Index.aspx?PageId=689&d=6 .

NOTICE TO CONTRACTORS

Environmental Stewardship

The Maryland State Highway Administration is committed to the development and maintenance of the Administration's highway system in an environmentally responsible manner. Therefore, Contractors are encouraged to consider the use of Administration-approved recycled and reclaimed materials in construction projects where practicable, and in accordance with the Plans and Specifications.

The Contractor is also encouraged to reuse, salvage, or recycle all generated waste materials to the extent possible. Materials that are easily recognizable, maintain their physical properties, meet the required material properties for recycling, are easily separated and transported, and have value as commodities are candidates for recycling. These types of materials generally include metals (steel, iron, copper, aluminum, bronze, etc.), plastics (cones, barrels, barricades, crash cushion plastic barrels, conduit, containers, etc.), aluminum poles and signs, electronic and electrical components, signals and signal components, topsoil, formwork, temporary falsework, brick, masonry, stone, wood, paper, and timber and yard waste from clearing and grubbing operations.

CONTRACTOR REGISTRATION REQUIREMENTS

On all Federal-Aid funded contracts, the Administration is requiring that Contractors have an active Dun and Bradstreet Data Universal Numbering System (DUNS) and be registered in the Central Contract Registration (CCR) database prior to Award of Contract.

The Contractor DUNS number is a unique nine-digit number issued by Dun & Bradstreet, followed by the optional 4 digit DUNS Plus number (reported as "999999999.9999"). A DUNS number can be obtained on-line at http://fedgov.dnb.com/webform.

The Central Contractor Registration (CCR) is no longer the primary registrant database for the U.S. Federal Government.

The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is NO fee to register for this site. Entities may register at no cost directly from this page. User guides and webinars are available under the Help tab. Contractor's can now register on-line at https://www.sam.gov.

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.

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.

OCCUPYING WETLANDS

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

(a) Prior to performing any work on the project, the areas of wetland will be identified and marked as directed by the Administration. All personnel of the Contractor or sub-contractors shall be alerted to these designated areas.

(b) The Contractor or sub-contractors shall not impact any wetland or waterway, whether it be permanently or temporarily unless otherwise stipulated in the permit application and approved as an authorized action by the appropriate regulatory agency. No fill shall be placed in these areas without a permit.

(c) If a Contractor or sub-contractor has to impact a wetland or waterway that is not covered by an existing wetland permit, they shall immediately notify the Engineer. The Engineer will notify the Environmental Programs Division to determine the extent of any permit modification. At that time the Environmental Programs Division will request a permit modification or submit a permit application.

(d) If the Contractor impacts any wetland or waterway for which they do not have a wetland permit, they shall be responsible for restoring the wetland areas and possibly mitigating the wetland impacts to the full satisfaction of the environmental agencies, which could include monetary compensation.

(e) The cost of restoration and mitigation of the impacted areas shall be at no additional cost to the Administration.

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

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work

classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for

determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed,

as specified in the applicable wage determination incorporated into the contract.

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

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

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

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

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

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

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

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

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

CONTRACT GOALS

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

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

The bidder agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 and SAFETEA-LU have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all bidders shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 and SAFETEA-LU to ensure that disadvantaged business enterprises have an equal opportunity to compete for and perform on Federally funded contracts. The Maryland Department of Transportation and their bidders shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Contract.

A. GENERAL

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

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

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

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

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

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

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

DBE/MBE Participation Packet – The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The DBE/MBE Participation Packet consists of the Certified DBE Utilization and Fair Solicitation Affidavit and the DBE Participation Schedule, both of which must be submitted with your bid or initial price proposal. The DBE Participation Packet also includes the following documents, which shall be submitted after bids or proposals are opened: Outreach Efforts Compliance Statement (MDOT-OP-018-2), DBE Subcontractor Project Participation Affidavit (MDOT-OP-019-2), MDOT Joint Venture Disclosure Affidavit (D-EEO-006), and Minority Contractor Unavailability Certificate (OOC46).

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

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

Joint Venture – An association of a DBE/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 DBE/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.

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

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

1. Found by the MDOT to be socially and economically disadvantaged on a case-by-case basis;

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c. "Native Americans," which includes persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;

d. "Asian-Pacific Americans," which included persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

e. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

f. Women;

3. Only those persons whose personal net worth does not exceed $750,000 may be found to be economically disadvantaged.

B. DBE/MBE and Good Faith Effort Requirements

1. This contract includes a DBE participation goal for subcontracting and/or procurement of materials and/or services. Bidders (or offerors) must make a good faith effort to meet the DBE participation goal **before bids or proposals are due**, including outreach efforts. A bid or initial proposal must include both a completed and executed Certified DBE Utilization and Fair Solicitation Affidavit and DBE Participation Schedule. The failure of a bidder to complete and submit these documents shall result in a determination that the bid is not responsive. The failure of an offeror to complete and submit these documents shall result in a determination that the proposal is not susceptible of being selected for award.

2. In making a good faith effort to achieve the DBE goal, prior to completing the Certified DBE Utilization and Fair Solicitation Affidavit and the DBE Participation Schedule and prior to submitting a bid or initial proposal the bidders (or offerors) including those bidders or offerors that are certified DBEs must:

a. Identify specific work categories within the scope of the procurement appropriate for subcontracting and/or procurement of materials and/or services;

b. Solicit DBEs in writing at least 10 days before bids or initial proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts and/or procurement of materials and/or services;

c. Attempt to make personal contact with the DBEs solicited and to document these attempts;

d. Assist DBEs to fulfill, or to seek waiver of, bonding requirements; and

e. Attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to DBEs.

3. All firms bidding on a Federal-Aid Contract shall submit the name and address of all subcontractors, service providers and suppliers that submitted quotes on the Contract. All subcontractors, service providers and suppliers shall complete and submit the form entitled Contractor Information, to the Administration.

4. The bidder shall seek commitments from disadvantaged business enterprises by subcontracting and/or procurement of materials and/or services, the combined value of which equals or exceeds the appropriate percent (goal) of the total value of the prime contract. A bidder may count toward its DBE goals expenditures for materials and supplies obtained from DBE regular dealers and/or manufacturers provided that the DBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). The bidder may count sixty (60) percent of its expenditures to a DBE regular dealer that is not a manufacturer, provided that the DBE supplier performs a commercially useful function in the supply process. The apparent low bidder shall submit to the Administration, within ten (10) business days after notification that it is the apparent low bidder, an acceptable Affirmative Action Plan for the utilization of Disadvantaged Business Enterprises in this Contract. The Contract will not be awarded without the Bidder's AAP being approved by the Administration.

The Affirmative Action Plan shall include as a minimum:

a. The name of an employee designated as the bidder's liaison officer for minority affairs.

b. A complete DBE Subcontractor Project Participation Affidavit (MDOT-OP-019-2), using contractors whose names appear in the DBE/MBE directory or who are otherwise certified by MDOT as being a disadvantaged business enterprise. Except as permitted by law and approved by the Administration, this affidavit shall include all DBE firms identified on the DBE Participation Schedule with a percentage of participation that meets or exceeds the percentage of participation indicated in the bid or initial proposal.

c. A completed Outreach Efforts Compliance Statement (MDOT-OP 018-2).

5. When a bidder intends to attain the appropriate goal for disadvantaged business enterprise participation by use of a joint venture, the bidder shall submit a Joint Venture Disclosure Affidavit (Form D-EEO-006-A) showing the extent of disadvantaged business participation. If a bidder intends to use a joint venture as a subcontractor to meet its goal, the affidavit shall be submitted through the bidder by the proposed subcontractor and be signed by all parties. A DBE, even in a joint venture arrangement shall be certified as a DBE by MDOT prior to being included in the Affirmative Action Plan.

6. Where the proposed DBE participation does not meet the DBE contract goals, sufficient evidence to demonstrate that the bidder has taken all necessary and reasonable steps to make a good faith effort to meet these goals shall be required.

7. Determination of Bid Responsiveness for Federal-Aid Contracts

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

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

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

b. A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goals;

c. For each DBE that the Contractor considers not qualified, but from which a bid has been received, a detailed statement of the reasons for the bidder's conclusion; and

d. For each DBE contacted but unavailable, (i) a Minority Contractor Unavailability Certificate (Form OOC46) signed by the disadvantaged business enterprise, or (ii) a statement from the bidder shall be submitted that states that the DBE refused to sign the Certificate.

8. Guidance concerning good faith efforts. The following is a list of the types of actions and factors that will be used to determine the bidder's or offeror's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(2) Selecting portions of the work to be performed by DBEs in order to increase the

likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder or offeror might otherwise prefer to perform these work items with its own forces.

(3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) **(a)** Negotiating in good faith with interested DBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

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

(5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

(7) Making efforts to assist interested DBEs 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 DBEs.

(9) In determining whether a bidder or offeror has made good faith efforts, you may

take into account the performance of other bidders or offerors in meeting the contract goal. For example, when the apparent successful bidder or offeror fails to meet the contract goal, but others meet it, the Administration may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder or offeror could have met the goal. If the apparent successful bidder or offeror fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders or offerors, the Administration may view this, in conjunction with other factors, as evidence of the apparent successful bidder or offeror having made good faith efforts.

9. Bidder Use of DBE Special Services

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

10. Bidder Records

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

11. Bidder Cooperation

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

12. Bidder DBE Modifications

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

C. RECORDS AND REPORTS

1. The Contractor shall keep such records as are necessary to determine compliance with its Minority Business Enterprise utilization obligations. The records kept by the Contractor shall be designed to indicate:

a. The name of disadvantaged and non-disadvantaged subcontractors and suppliers, the type of work materials or services being performed on or incorporated in this project, and the monetary value of such work materials or services.

b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of disadvantaged business enterprises on this project.

c. The progress and efforts made in seeking out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project.

2. Information required to be submitted for Federally Assisted contracts in accordance with 49 CFR Part 26:

a. All bidders (not only the apparent successful bidder) shall provide the following information:

(1) The age of the bidding firm; and

(2) The annual gross receipts of the bidding firm.

b. All bidders (not only the apparent successful bidder) shall provide the following information for each firm quoting or considered as subcontractors:

(1) The name of firm; and

(2) The address of firm.

c. The Administration will contact each of the firms quoting or considered as subcontractors to obtain:

(1) The age of the firm; and

(2) The annual gross receipts of the firm

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

3. The Contractor shall submit reports on a monthly basis of those contracts and other business transactions executed with disadvantaged business enterprises with respect to the records referred to in Subparagraph 1.a above, in such form, manner, and content as prescribed by the Administration. The reports shall be due monthly on the 15th calendar day of each month. If the Contractor cannot submit their report on time, they shall notify the Administration's Representative and request additional time to submit the report. Failure of the Contractor to report in a timely manner may result in a finding of noncompliance. Additional reports may be required by the Administration upon written request.

4. To ensure compliance with the certified DBE contract participation goals, the Contractor shall:

a. Submit monthly, a report listing unpaid invoices, over 30 days, from all certified DBE subcontractors and the reason payment has not been made;

b. Include in its agreement with certified DBE subcontractors a requirement that the DBE subcontractors are to submit monthly to the Administration, a report identifying the prime Contractor and listing the following:

1. Payment received from the Contractor in the preceding 30 days; and

2. Invoices for which the subcontractor has not been paid.

5. All such records shall be retained for a period of three years following acceptance of final payment and shall be available for inspection by the U.S. Department of Transportation, the Maryland Department of Transportation, and the Administration.

D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

1. Whenever the Administration believes the prime Contractor or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration Representative will conduct an investigation. If the Administration Representative finds the prime Contractor or any subcontractor not in compliance with these provisions, he will make a report of non-compliance and notify such Contractor in writing of the steps that will, in the judgment of the Administration, bring the Contractor into compliance. If the Contractor fails or refuses to comply fully with such steps, the Administration Representative will make a final report of noncompliance to the Administrator, who may direct the imposition of one or more of the sanctions listed below:

a. Suspension of work on a project, pending correction;

b. Withholding payment or a percentage thereof, pending correction;

c. Referral of DBE/MBE to MDOT Office of MBE for review for decertification or minority business fraud investigation;

d. Referral to MDOT Office of MBE for review/referral to the Attorney General's Office for review for initiation of debarment;

e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel; or

f. Any other action as appropriate.

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

2. If the documents used to determine the status of a DBE contain false, misleading, or misrepresenting information, the matter may be referred to the MDOT Office of MBE for appropriate action.

3. Loss of DBE Certification

a. When a prime Contractor has made a commitment to use a DBE who has lost its certification but the subcontract has not been executed prior to the notice of loss of certification, the prime Contractor is required to obtain an eligible, certified DBE for the contract or demonstrate to MDOT that it has made a good faith effort to do so.

b. When a prime Contractor has executed a contract with a DBE subcontractor before the notice of loss of certification, the prime Contractor may continue to use the firm on the contract and may continue to receive credit towards its DBE goal, i.e., contract goal, for the work of that subcontractor.

c. The work carried out by a DBE Prime Contractor would be counted by MDOT up to the loss of certification. The work performed after the loss of certification would not be considered DBE participation.

d. When a DBE subcontractor has lost its certification, MDOT may not continue to count the DBE participation which takes place after the loss of certification as DBE work when counting participation towards the overall goal of the modal administration or the Department.

e. If a DBEs loss of certification is the result of exceeding the size standards while performing on a contract, the DBE participation may be counted for both the contract goal and the overall goal.

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.

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)

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.

(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.

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).

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

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

1. The Offeror's or Bidders attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as noted in Appendix A and B:

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

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

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

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is noted on appendix B.

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

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c." Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and,

(iv) American Indians or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through 7.p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the

policy with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO Policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to insure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through 7.p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more if its obligations under 7.a through 7.p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractors shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at

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

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

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

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

APPENDIX A

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

AREA COVERED: Nationwide

GOALS AND TIMETABLES

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

APPENDIX B

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

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

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

TRAINING PROVISIONS

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

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

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

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

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

The MTU schedule shall include:

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

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

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

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

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

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

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

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

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

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

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

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

1. Contributes to the cost of the training.

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

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

1. Systematic and direct recruitment likely to yield qualified minority and women applicants is conducted through:

a. Public and private referral sources.

b. Advising the existing workforce of training opportunities.

c. Unions (if applicable).

2. Acceptable training has been provided to trainees enrolled in the program.

3. The number of specified trainees have completed the minimum hours required in an approved training program.

4. Trainees completing approved programs are retained in the workforce as journeypersons.

The Contractor shall pay the trainees at least 60 percent of the appropriate minimum journeyperson's hourly rate plus the full fringe benefits specified in the Contract for the first half of the training period, 75 percent for the third quarter of the training period plus full fringe benefits, and 90 percent for the last quarter of the training period plus full fringe benefits. However, in no case shall the total hourly rate be less than the U.S. Department of Labor's unskilled laborer wage rate for the project. In addition, all trainees shall be identified as such on the certified payroll.

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

1. Certificate of Completion when a trainee completes the total number of hours required to complete a training program.

2. Certificate of Training when a trainee does not totally complete the required program hours.

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

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

1. Withholding a percentage of the progress payment.

2. Other action appropriate and/or within the discretion of the Administrator.

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.

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-4.02 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 $1,000.00 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 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.

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.

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 for Construction Management at Risk located in, Harford County, Maryland, for which Proposals will be received until 12:00 o'clock noon on 2nd day of October, 2013,this work being situated as follows:

MD 24 - Section A, from Deer Creek Bridge to 1,800 feet South of the bridge; and Section G, from 900 feet South of Sharon Road to 1,700 feet North of Ferncliff Lane

To the State Highway Administration:

Ms. Norie A. Calvert, Director
Office of Procurement and Contract Management
Fourth Floor, C-405
707 N. Calvert Street
Baltimore, Maryland 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 bid proposal as principals, and that an examination has been made of the work site, the Specifications, the Plans, 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 DOLLARS	UNIT PRICE CENTS	AMOUNTS DOLLARS	AMOUNTS CENTS
1001 120500	LUMP SUM	MAINTENANCE OF TRAFFIC – SECTION A ONLY	104	LUMP SUM			
1002 130850	LUMP SUM	MOBILIZATION – SECTION A ONLY	104	LUMP SUM			
2001 130850	7,000	CUBIC YARDS OF CLASS 2 EXCAVATION – SECTION A ONLY	201				
4001 400000	3,800	TONS OF FURNISH AND INSTALL IMBRICATED STONE FOR RETAINING WALL – SECTION A ONLY	XXX				
		THIS PROPOSAL SHALL BE FILLED IN BY THE BIDDER WITH PRICES IN NUMERALS AND EXTENSIONS SHALL BE MADE BY HIM.					

END OF CONSTRUCTION ITEMS

STATE CONTRACT - HA3345171
FEDERAL CONTRACT - PENDING

SCHEDULE OF PRICES

ITEM NO. CCS NO.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEMS	SECTION	UNIT PRICE DOLLARS	UNIT PRICE CENTS	AMOUNTS DOLLARS	AMOUNTS CENTS
NA	LUMP SUM	CMAR PRECONSTRUCTION FEE – SECTION A	XXX	LUMP SUM			
NA	LUMP SUM	CMAR PRECONSTRUCTION FEE – SECTION G	XXX	LUMP SUM			
		THIS PROPOSAL SHALL BE FILLED IN BY THE BIDDER WITH PRICES IN NUMERALS AND EXTENSIONS SHALL BE MADE BY HIM.					

PRECONSTRUCTION SERVICES ONLY

STATE CONTRACT - HA3345171
FEDERAL CONTRACT - PENDING

GENERAL MATERIAL REQUIREMENTS

CONVICT PRODUCED MATERIALS

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

CONTRACT PROVISION BUY AMERICA

This section only applies to projects partially or totally financed with Federal funds. The Contractor shall comply with Section 165 of the Surface Transportation Assistance Act of 1982 as amended by Section 1041(a) and 1048(a) of the Intermodal Surface Transportation Efficiency Act of 1991 with regard to the furnishing and coating of iron and steel products.

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

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

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

(b) The following are considered to be steel manufacturing processes:

(1) Production of steel by any of the following processes:

(a) Open hearth furnace.
(b) Basic oxygen.
(c) Electric furnace.
(d) Direct reduction.

(2) Rolling, heat treating, and any other similar processing.

(3) Fabrication of the products:

(a) Spinning wire into cable or strand.
(b) Corrugating and rolling into culverts.
(c) Shop fabrication.

(c) The manufacturing process for a steel/iron product is considered complete when the product is ready for use as an item (e.g., fencing, posts, girders, pipe, manhole cover, etc.) or could be incorporated as a component of a more complex product through a further manufacturing process (e.g., prestressed concrete girders, reinforced concrete pipe, traffic control devices, bearing pads, etc.). A product containing both steel and/or iron components, may be assembled outside the United States and meet Buy America requirements if the constituent steel and iron components (in excess of the minimal amounts permitted) were manufactured domestically and are not modified at the assembly location prior to final assembly.

(d) If domestically produced steel billets or iron ingots are exported outside of the U.S., as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.

(e) Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

(f) For the Buy America provisions to apply, the steel or iron product must be permanently incorporated into the project. If an item is rendered as a "donated material" in accordance with 23 U.S.C. 323 – Donations and Credits, it will have to comply with Buy America requirements. While States and local governments may receive a credit for donated material, this material must generally comply with Buy America requirements. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary

bridges, steel scaffolding and falsework. Further, Buy America does not apply to materials which remain in place at the contractor convenience.

(g) Certifications which document that steel and iron have been manufactured and that coatings for iron or steel have been applied in the United States shall be provided to the Contractor by the manufacturer. The Contractor shall provide the required certifications to the Engineer prior to such items being incorporated into the permanent work. Certifications shall extend to materials utilized in manufactured and fabricated products purchased by the Contractor.

(h) Products manufactured of foreign steel or iron materials may be used, provided the cost of such products as they are delivered to the project does not exceed 0.1% of the total contract amount, or $2,500, whichever is greater. If a supplier or fabricator wishes to use a partial fabrication process where domestic and foreign source components are assembled at a domestic location, the "as delivered cost" of the foreign components should include any transportation, assembly and testing costs required to install them in the final product.

(i) These provisions do not apply to any manufactured product unless the final product consists of at least 90% steel or iron content when it is delivered to the job site for installation. The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the manufactured product are not subject to the Buy America provision. For more information refer to FHWA Memorandum of Action entitled Clarification of Manufactured Products under Buy America, dated December 21, 2012 (available at http://www.fhwa.dot.gov/construction/contracts/121221.cfm).

ALTERNATE BID
USING FOREIGN PRODUCTS

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

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

1 - The "Bid Total" for the initial bid using Domestic Products shall be shown on line (1).

2 - The subtotal for Item Amounts using Domestic Products shall be shown on line (2), for those items which the Contractor elects to use Foreign Products.

3 - The subtotal for Item Amounts using Foreign Products shall be shown on line (3).

4 - The total Bid, utilizing Foreign Products shall be shown on line (4). The value is obtained by subtracting subtotal (2) from the Total Bid (1) and then adding subtotal (3).

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

ALTERNATE BID - USING FOREIGN PRODUCTS
BIDDER'S INSTRUCTIONS

When the bidder elects to submit a bid for one or more items using Foreign Products, the following form must be used. For each item that Foreign Products are contemplated, the appropriate "Item Numbers", "Approximate Quantities", "Description of Items", "Unit Price or Lump Sum Price", "Item Amount Domestic" and "Item Amount Foreign" shall be tabulated below as specified in the initial bid. The bidder shall indicate the unit price in dollars and cents and show the total cost of the item for each item that utilizes Foreign Products. When all items utilizing Foreign Products have been listed, the bidder shall indicate on Page 4 of 20 the subtotals of the Item Amounts for Domestic Products in Line (2) and for Foreign Products in Line (3).

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

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE AND AFFIANT

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder or offeror hereby certifies and agrees that the following information is correct:

In preparing its bid on this project, the bidder or offeror 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 vendors, 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 or offeror on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder or offeror 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 or offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder or Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

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, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

5. Been convicted of a violation of the Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

6. Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1) through (5) above;

7. Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

8. Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; 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 Section B – C and subsections (1) through (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. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate $100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of $500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

1. Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

2. By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b)Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;
(ii) The business' policy of maintaining a drug and alcohol free workplace;
(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;

(h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and
(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or
(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.

3. If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

4. I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

1 The business named above is a (domestic ___) (foreign __) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is (IF NOT APPLICABLE, SO STATE):

Name: _____
Address: _____
_____
_____

2. 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.

M. 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.

N. REPEALED

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid 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 convenants 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: _____
(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-N) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

IF AN INDIVIDUAL:

NAME:_____

_____
Street and/or P.O. Box

_____ _____
City State Zip Code Fed ID or SSN

_____(SEAL)_____
Signature Date

_____
Print Signature

WITNESS:_____
Signature

_____
Print Signature

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

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

In connection with the bid/proposal submitted in response to Solicitation No. HA3345171, I affirm the following:

1. DBE Participation (PLEASE CHECK ONLY ONE)

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

OR

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

2. Additional DBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 business days of receiving such notice: (a) Outreach Efforts Compliance Statement (MDOT DBE Form C - Federally-Funded Contracts); (b) Subcontractor Project Participation Statement (MDOT DBE Form D - Federally-Funded Contracts); (c) DBE Waiver Request documentation per COMAR 21.11.03.11 (if waiver was requested); and (d) Any other documentation required by the Procurement Officer to ascertain bidder's responsibility/ offeror's susceptibility of being selected for award in connection with the certified DBE participation goal.

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

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

3. Information Provided to DBE firms

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

4. Products and Services Provided by DBE firms

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

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

_____	_____
Company Name	Signature of Representative
_____	_____
Address	Printed Name and Title
_____	_____
City, State and Zip Code	Date

MDOT DBE FORM B
FEDERALLY-FUNDED CONTRACTS
DBE PARTICIPATION SCHEDULE

PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE

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

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

1. Please refer to the Maryland Department of Transportation (MDOT) DBE Directory at www.mdot.state.md.us 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 firm is certified in the MDOT Directory can be used for purposes of achieving the DBE participation goal.

2. In order to be counted for purposes of achieving the DBE participation goal, the firm `must be certified for that specific NAICS ("DBE" for Federally-funded projects designation after NAICS Code). **WARNING:** If the firm's NAICS Code is in **graduated status**, such services/products **will not be counted** for purposes of achieving the DBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).

3. Examining the NAICS Code is the **first step** in determining whether a DBE firm is certified and eligible to receive DBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm's Products/Services Description in the DBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the DBE participation goal.

4. If you have any questions as to whether a firm is MDOT DBE certified, or if it is certified to perform specific services or provide specific products, please call MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or send an email to mbe@mdot.state.md.us.

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

5. The Contractor's subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet a DBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this DBE Participation Schedule.

6. For each DBE firm that is being used as supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the DBE participation goal**:

   A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.

   B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the DBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no DBE participation credit will be given for the supply of these products.

   C. For purposes of achieving the DBE participation goal, you may count only the amount of any reasonable fee that the DBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the DBE Participation Schedule, please divide the amount of any reasonable fee that the DBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.

   D. Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific descrition of products/services) of the products/supplies to be provided? If the answer is NO please continue to Item E If the answer is YES, for purposes of achieving the DBE participation goal, you may count the total amount of the subcontract. For Column 3 of the DBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

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

E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the DBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the DBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the DBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.

7. For each DBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the DBE participation goal**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

   Example: $ 2,500 (Total Subcontract Amount) ÷ $10,000 (Total Contract Value) x 100 = 25%

8. Please note that for USDOT-funded projects, a DBE prime may count towards its DBE participation goal work performed by its own forces. Include information about the DBE prime in Part 2.

9. **WARNING:** The percentage of DBE participation, computed using the dollar amounts in Column 3 for all of the DBE firms listed in Part 2, MUST at least equal the DBE participation goal as set forth in MDOT DBE Form A – Federally-Funded Contracts for this solicitation. If the bidder/offeror is unable to achieve the DBE participation goals, then the bidder/offeror must request a waiver in Form A or the bid will be deemed not responsive, or the proposal not susceptible of being selected for award. You may wish to use the Goal Worksheet shown below to assist you in calculating the percentage and confirming that you have met the applicable DBE participation goal.

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

GOAL WORKSHEET	
Total DBE Firm Participation (Add percentages in Column 3 for all DBE firms listed in DBE Participation Schedule)	(A) _____%
The percentage amount in Box A above should be equal to the percentage amount in Box E below.	
Add *Countable* Subcontract Amounts (see 6 through 8 of Instructions) for all DBE firms listed in DBE Participation Schedule, and insert in Box B	(B) $_____
Insert the Total Contract Amount in Box C	(C) $_____
Divide Box B by Box C and Insert in Box D	(D) =_____
Multiply Box D by 100 and insert in Box E	(E) =_____%

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

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

PAGE __ OF ___

Prime Contractor	Project Description	Solicitation Number

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

COLUMN 1	COLUMN 2	COLUMN 3 Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
NAME OF DBE SUBCONTRACTOR AND TIER	**CERTIFICATION NO. AND DBE CLASSIFICATION**	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
☐ Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	**Certification Number:** _____ **(If dually certified, check only one box.)** ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other DBE Classification _____	3.1. **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS). _____% (Percentage for purposes of calculating achievement of DBE Participation goal) 3.2 **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER)** (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS). _____% Total percentage of Supplies/Products x _____60% (60% Rule) _____% (Percentage for purposes of calculating achievement of DBE Participation goal)

☐ Please check if Continuation Sheets are attached.

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

PAGE __ OF ___

Prime Contractor	Project Description	Solicitation Number

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

COLUMN 1	**COLUMN 2**	COLUMN 3 Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
NAME OF DBE SUBCONTRACTOR AND TIER	**CERTIFICATION NO. AND DBE CLASSIFICATION**	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
☐ Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	**Certification Number:** _____ **(If dually certified, check only one box.)** ☐ African American-Owned ☐ Hispanic American-Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other DBE Classification _____	3.1. **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR** (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS). _____% (Percentage for purposes of calculating achievement of DBE Participation goal) 3.2 **TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER)** (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS). _____% Total percentage of Supplies/Products x _____60% (60% Rule) _____% (Percentage for purposes of calculating achievement of DBE Participation goal)

☐ Please check if Continuation Sheets are attached.

MDOT DBE FORM B
FEDERALLY-FUNDED CONTRACTS
DBE PARTICIPATION SCHEDULE

PART 3 – CERTIFICATION FOR DBE PARTICIPATION SCHEDULE

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

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

The undersigned Prime Contractor hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

(1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or proposal;

(2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or proposal;

(3) fail to use the certified minority business enterprise in the performance of the contract; or

(4) pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

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

Company Name	Signature of Representative
Address	Printed Name and Title
City, State and Zip Code	Date

INFORMATION REQUIRED TO BE SUBMITTED FOR FEDERALLY ASSISTED CONTRACTS:

(a) Each bidder shall provide the following information:

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____>$10,000,000

(b) Each bidder shall provide the following information for each firm quoting or considered as subcontractors and/or suppliers:

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____> $10,000,000

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____> $10,000,000

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____> $10,000,000

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____> $10,000,000

NAME OF FIRM:_____

_____
Street and/or P.O. Box

_____
City State Zip Code

____ DBE ____ Non-DBE Age of the firm ____ years
Annual gross receipts per last calendar year _____<$500,000 ____$500,000-1,000,000
____$1,000,000-3,000,000 ____$3,000,000-5,000,000 ____$5,000,000-10,000,000
____> $10,000,000

Submit additional copies of this page as page 29A of 31, 29B of 31, 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

To Be Determined for any Construction Contract Amendments (calendar date)

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

To Be Determined for any Construction Contract Amendments per calendar day

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 full 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).