

**STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION**



INVITATION FOR BID

CONTRACT NO. T-8000-0396

**MARC RAIL STATIONS SNOW AND ICE REMOVAL
MAINTENANCE SERVICES
PENN CENTRAL REGION**

Any prospective Offeror/Bidder who has received this document from a source other than the Issuing Office should immediately contact the Procurement Officer and provide their name and mailing address in order that amendments to the Invitation for Bids (IFB) or other communications can be sent to them. Any prospective Offeror/Bidder who fails to notify the Procurement Officer with this information assumes complete responsibility in the event that it does not receive communications from the Issuing Office to the closing date or thereafter.

ISSUE DATE: August 1, 2012



MARYLAND TRANSIT ADMINISTRATION

MARYLAND DEPARTMENT OF TRANSPORTATION

Martin O'Malley, Governor • Anthony G. Brown, Lt. Governor
Beverley K. Swaim-Staley, Secretary • Ralign T. Wells, Administrator

August 1, 2012

ATTENTION: POTENTIAL BIDDERS

**SUBJECT: IFB NO. T-8000-0396 – MARC RAIL STATIONS SNOW AND ICE
REMOVAL MAINTENANCE SERVICES, PENN CENTRAL REGION**

DESCRIPTION: The Maryland Transit Administration is seeking qualified Contractor to provide all necessary labor and equipment with operator, as specified, for the “clearing/removal” of snow or ice from all roadways, parking areas, vehicle entrances, sidewalks, handicap ramps, station areas and station platforms for the Maryland Transit Administration MARC Train Service Stations. The Contractor shall provide these services on an as-needed basis.

The Maryland Transit Administration (MTA) has advertised the above-referenced solicitation. In order to access and download the solicitation, please visit our website at www.mta.maryland.gov and follow the links “Business”, “Procurement” and “Bid/Solicitation” “Click on specifications for the contract of interest, which will transfer you to a registration page. Follow the instructions to obtain a vendor number that will allow you access to the bid documents for review and downloading capabilities.

Sincerely,

Karen Elsey

Karen Elsey
Procurement Administrator
MTA Procurement Division
6 Saint Paul Street, 7th Floor
Baltimore, MD 21202
(410) 767-3591 [Voice]
(410) 333-4810 [Fax]

MARYLAND TRANSIT ADMINISTRATION

CONTRACT NO. T-8000-0396

MARC RAIL STATIONS SNOW AND ICE REMOVAL MAINTENANCE SERVICES
PENN CENTRAL REGION

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**State of Maryland
Notice to Vendor/Contractors**

In order to help us improve the quality of State solicitations and make our procurement process more responsive and business-friendly, we ask that you take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your bid or proposals (or no bid), as the case may be. Thank you for your assistance.

Bid/Proposal Number: T-8000-0396, entitled: MARC RAIL STATIONS SNOW AND ICE REMOVAL MAINTENANCE SERVICES PENN CENTRAL REGION

- I. If you have responded with a no bid, please indicate the reason below.
 - o Other commitments preclude our participation at this time.
 - o The subject of the contract is not something we normally provide.
 - o We are inexperienced in the work/commodities required.
 - o The specifications are either unclear or too restrictive. (Please explain in remarks section)
 - o The scope of work is beyond our current capacity.
 - o Doing business with government is simply too complex.
 - o We cannot be complete. (Please explain in remarks section).
 - o Time for completion is insufficient.
 - o Bonding/insurance requirements are prohibitive. (Please explain in remarks section).
 - o Bid /proposal requirements, other than specifications, are unreasonable or too risky. (Please explain in remarks section).
 - o Prior experience with the State of Maryland contracts was unprofitable or otherwise unsatisfactory. (Please explain in remarks section).
 - o Other: _____

- II. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the remarks section below. (Use the back for additional information).

Remarks: _____

Vendor Name: _____ Date: _____

Contract: _____ Phone: () _____

Address: _____

PLEASE FAX THIS FORM TO (410) 333-4810 Attn: Karen Elsey or mail to Maryland Transit Administration, Procurement Division, 6 St. Paul Street, 7th Floor, Baltimore, MD 21202.

THANK YOU

MARYLAND TRANSIT ADMINISTRATION

**MARC RAIL STATIONS SNOW AND ICE REMOVAL MAINTENANCE SERVICES
PENN CENTRAL REGION**

CONTRACT NO. T-8000-0396

SECTION I – SOLICITATION INFORMATION AND INSTRUCTIONS

A. BACKGROUND

The Maryland Transit Administration (MTA) is a modal administration within the Maryland Department of Transportation. The Administration directly operates bus, metro, light rail and mobility transit services in the "Metro Transit District" comprising Baltimore City, and the surrounding counties. The Administration also contracts with several companies to operate statewide and commuter bus services, mobility services and commuter rail services ("MARC").

B. PURPOSE

The purpose of this Invitation for Bids (IFB) is to award a contract to qualified Contractor to furnish all necessary labor and equipment with operators, as specified for the "clearing/removal" of snow and ice from all roadways, parking areas, vehicle entrances, sidewalks, handicap ramps, station areas and station platforms for the Maryland Transit Administration/MARC Train Service Stations. The Contractors shall provide these services on an as-needed basis.

A detailed description of the work to be performed is provided in the "Scope of Work" of this IFB. (See Section II.) **The State reserves the right to make the award by item, or group of items, or total bid if it is in the best interest of the MTA and the State.**

C. ADMINISTRATIVE/CONTRACTUAL INFORMATION

1. Issuing Office

This IFB is issued by the MTA Procurement Department. The sole point of contact for this IFB is the Procurement Officer at the issuing office address as shown below:

Karen Elsey, Procurement Administrator
Maryland Transit Administration
William Donald Schaefer Tower
6th Saint Paul Street, 7th Floor
Baltimore, MD 21202-1614
Telephone 410-767-3591
Facsimile at 410-333-4810
E-mail address: kelsey@mta.maryland.gov

2. Pre-Bid Conference

A Pre-Bid Conference will be held on **Wednesday, August 15, 2012** at the MTA's location **6 St. Paul St, 7th Floor, Baltimore, Maryland 21202, beginning at 10:00 A.M.** Although all Bidders are encouraged to attend the Pre-Bid Conference, attendance is not mandatory. The number of representatives from each firm planning to attend the Pre-Bid Conference is limited to no more than two (2) persons. Please complete the Pre-Bid Conference Attendance Form (Attachment 4) and submit by **Tuesday, August 14, 2012 at 2:00 pm to Karen Elsey, Procurement Officer, via e-mail at kelsey@mta.maryland.gov or via fax at 410-333-4810.** Ms. Elsey may also be contacted via telephone at **410-767-3591.**

A written summary of the Pre-Bid Conference and all known questions and answers provided at the time of the conference, will be distributed on the MTA's website (www.mta.maryland.gov).

3. Inquiries

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the due date for bid opening. Questions may be submitted by mail, facsimile, or by e-mail to the Procurement Officer. **The submission deadline for written inquiries is Wednesday, August 22, 2012 by 4:00 p.m. (Eastern Time).** In case of questions not received in a timely manner, the Procurement Officer shall, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the bid due date. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known by the Procurement Officer to have received a copy of the IFB.

4. Approved Equals And/Or Exceptions

Requests for approved equals and/or exceptions to the specifications must be in writing on the form provided in Attachment 3 of this IFB. Any questions and/or clarifications regarding the specifications must also be submitted in writing on the contractor's letterhead. All exceptions/approved equals and questions/clarifications must be submitted no later than **4:00 P.M., August 22, 2012.** Facsimile inquiries should be forwarded to 410-333-4810, Attention: Karen Elsey. Facsimile messages will not be accepted unless accompanied by telephone notifications at (410) 767-3591. Any verbal responses will not be binding on the MTA.

Bidders are cautioned that any exceptions to the proposed contract or exceptions to other material requirements shall render their bid non-responsive unless approved prior to the opening of the bid.

5. Submission Deadline

In order to be considered, bids must be received no later than **2:00 p.m. (Eastern Time) on Thursday, September 6, 2012** by the Procurement Officer at the address listed in Section I.C.1. Bidders submitting bids by mail should allow sufficient mailing and delivery time to ensure timely receipt by the Procurement Officer. Bids arriving after the closing date and time are late and shall be rejected in accordance with applicable regulations. Electronic and fax bids will not be accepted. A public bid opening will be held at the address referenced in Section I C.1. of this IFB.

The "Unit Price Schedule" form shall not be altered in any way and shall contain only the price or prices stipulated on the form. The "Unit Price Schedule" (UPS) form must contain all cost information in the format specified. All bids recorded shall be "fully loaded" and, as such, be inclusive of the direct and indirect cost (i.e. overhead, hourly rates, general administration, profit, taxes, and fringe benefits, etc) associated with the delivery of services of this contract. The State does not guarantee a minimum or maximum numbers of service hours, for any Bidder awarded this contract.

A bid, request for modification, or request for withdrawal is late if it is not received by the Procurement Officer at the place and by the date and time specified in Section I.C.1 of this IFB.

A late bid, late modification, or late request for withdrawal shall not be considered. Exceptions may be made when a late bid, modification, or withdrawal is received before Contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees. A late modification of a successful bid that makes its terms more favorable to the State shall be considered at any time it is received and may be accepted.

6. Bids

Bids shall be prepared simply and economically, providing a straightforward, concise description of the Bidder's ability to meet the requirements of this IFB. The Bidder shall ensure that prices submitted on the Bid Form Unit Price Schedule (Section IV) in response to this IFB are fully loaded and include all materials, direct and indirect labor costs, other costs and profits for the Bidder. All bids become the property of the Agency, and neither the Agency nor the State of Maryland will be responsible for any expenses incurred by the Bidders in preparing or submitting their bids or for any other associated costs.

Bidders shall complete and submit their bids on the Bid Form Including Unit Price Schedule (Section IV of this IFB). Oral, telegraphic, electronic mail, facsimile or mailgram bids shall not be accepted. The Bid and all bid forms of each Bidder shall be signed by a corporate officer, partner, proprietor or individual authorized to legally bind the Bidder.

The State does not guarantee a minimum or maximum numbers of service hours, for any Bidder awarded this contract.

All bids shall be accompanied by a completed Bid/Proposal Affidavit (Attachment 1 of this IFB), Conflict of Interest Form (Attachment 5 of this IFB), Experience and References Form (Attachment 10 of this IFB), Living Wage Affidavit (Attachment 11 of this IFB), and any other documents, as applicable. The sample Contract Agreement and Contract Affidavit (Section V and Attachment 2 of this IFB, respectively) are included for reference only and shall be completed only by the Bidder recommended for contract award.

7. Signatures

An officer authorized to make a binding commitment for the firm(s) making the bid shall sign all bids.

8. Procurement Method

This procurement is being conducted in accordance with the Code of Maryland Regulation (COMAR), Title 21, State Procurement Regulations, COMAR 21.05.02, Procurement by Competitive Sealed Bidding. In accordance with COMAR 21.05.02.13, the State intends to award a contract to the responsible and responsive bidder whose bid meets the requirements set forth in the IFB and is the most favorable bid price.

9. Contract Duration

This contract shall be in force for a period of **three (3) years** from the start date stated in the *Notice to Proceed* letter with one (1) two-year option..

10. Incurred Expenses

The State will not be responsible for any costs incurred by Bidders in preparing and submitting a response to this IFB or for any other associated costs.

11. Addenda and Revisions To The IFB

If it becomes necessary to revise this IFB before the due date for bids, an addendum to the IFB will be posted on the MTA Website as described in the Prospective Bidders Letter. Bidders shall acknowledge receipt of all addenda in the transmittal letter of the Bid. (See Section IV).

12. Cancellation And Rejection Of Bids

The Agency reserves the right to cancel this solicitation or accept or reject any or all bids, in whole or in part. The Agency also reserves the right to waive minor irregularities in bids, or allow the Bidder to correct a minor irregularity, if either action is determined to be in the best interest of the State. If the solicitation is canceled, a notice of cancellation will be provided to all Vendors who were sent this solicitation or are otherwise known by the Procurement Officer to have obtained this solicitation. The Agency reserves the right to cancel this IFB in accordance with COMAR Regulation 21.06.02.

13. Duration Of Bid

Bids submitted in response to this IFB are irrevocable for one hundred twenty (120) days following the closing date of bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

14. Contract Type

The contract to be awarded, as a result of this IFB, will be a Fixed Price contract pursuant to COMAR 21.06.03.02.

15. Compliance With Law

By submitting a bid in response to this IFB, the successful Bidder(s) selected for award agrees that it shall comply with all Federal, State and local law applicable to its activities and obligations under the Contract.

16. Arrearages

By submitting a response to this IFB, the Bidder(s) represents that it is not in arrears in the payment of any obligation due and owing to the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become in arrears during the term of this contract if selected for the contract award.

17. Acceptance of Terms and Conditions

- a. By submitting a bid in response to this IFB, Bidders shall be deemed to have accepted all the terms and conditions, set forth in this IFB and in the attached General Conditions for Maintenance Services, Attachment 9.
- b. In the event of a conflict between provisions of the Contract, the IFB, the General Conditions, or any other document incorporated by reference into the Contract, the following order of precedence shall determine the prevailing provisions:
 1. The Contract
 2. The Invitation for Bid, including any addenda.
 3. The MDOT General Conditions for Maintenance Services, as amended July 2002.
 4. The Contractor's Bid, including any amendments.
- c. Section 52, Disputes, of the MDOT General Conditions for Maintenance was amended to incorporate the following language:

“Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.”

18. Procurement Regulations

This IFB and any resulting contract shall be governed by the State Finance and Procurement Article and by COMAR Title 21, State Procurement Regulations, as amended.

19. Conflict Of Interest

The Bidder covenants that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services required under this IFB. (Attachment 5)

20. Incorporation By Reference

All terms and conditions of the IFB and amendments thereto, all provisions of the successful Bid and submittals in response to the IFB and amendments thereto, all applicable State and Federal Laws, statutory and regulatory provisions and orders, shall be incorporated by reference and made a part of the

contract to be entered into as result of this IFB.

21. Alternate Bids and Multiple Bids

Alternate or multiple bids will not be accepted.

22. Resident Business Reciprocal Preferences

When awarding by competitive sealed bids, the Agency may, in accordance with COMAR 21.05.01.04, give a preference to the lowest responsive and responsible bid from a “resident business” (as defined in COMAR 21.05.01.04A(3)) if the State in which the non-resident business is located gives its residents preference. The preference given shall be identical to the preference given by the other state to its residents, unless this conflicts with any federal grant or regulation affecting this Contract.

23. Verification of Registration And Tax Payments

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. They can be reached at 410-767-1330, or online at www.dat.state.md.us. It is strongly recommended that any potential Bidder complete registration prior to the due date for receipt of bids. A Bidder’s failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Bidder from final consideration and recommendation for contract award.

All corporations doing business in Maryland are also required to register with the Department of Labor, Licensing and Regulation and must have a resident agent. The resident agent must be either an individual (not the corporation itself) with an address within the boundaries of Maryland or a corporation that represents other corporations as a resident agent.

24. Use of “e-Maryland Marketplace”

“e-Maryland Marketplace” is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the e-Maryland marketplace web site (<https://emaryland.buyspeed.com/bsol/login.jsp>) and other means for transmitting the IFB and associated materials, the solicitation and minutes of the pre-bid conference, vendors questions and MTA responses, addenda, and other solicitation related information will be provided by the Procurement Officer.

This means that all such information is immediately available to subscribers to e-Maryland Marketplace. Because of the instant access afforded by e-Maryland Marketplace, it is recommended that all vendors interested in doing business with Maryland State agencies subscribe to e-Maryland Marketplace.

25. Electronic Funds Transfer (EFT)

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller’s Office grants an exemption. The selected Bidder/Offeror shall register using the attached form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form (Attachment 6). Any request for exemption must be submitted to the State Comptroller’s

Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.(Attachment 6).

26. False Statements

Bidders are advised that Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

27. Invoice Submission Requirements

The Contractor shall submit, on a monthly basis, an invoice for work performed, completed, and accepted by MTA. Payment to the Contractor shall be made no later than thirty (30) days after the MTA's receipt of an approved invoice.

An approved invoice shall consist of the following information:

- The Contractor's Federal Employer Identification Number (FEIN) or Social Security Number, and the Contract Name and Number shall appear on the face of each invoice.
- A detailed description of the work performed and materials used must be included with each invoice. All prices will remain firm, in accordance with the prices submitted on the "Bid Form/Unit Price Schedule.
- Address all invoices to the **Project Manager, Beverly Hamlin** at the following address:

**Beverly Hamlin, Project Manager
MARC Train Facilities
1515 Washington Blvd
Baltimore, MD 21230
410-454-7133 (Office)**

- Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland are prohibited.

28. **Minority Business Enterprise Notice**

Minority Business Enterprises (MBE) are encouraged to respond to this solicitation notice and are therefore encouraged to obtain certification from the Maryland Department of Transportation. All questions related to certification must be directed to the Maryland Department of Transportation Office of Minority Business Enterprise/Equal Opportunity:

Maryland Department of Transportation
Office of Minority Business Enterprise/Equal Opportunity
7201 Corporate Center Drive
P. O. Box 548
Hanover, MD 21276
Telephone: 410-865-1240

Bidders attempting to classify themselves as minority contractors, within the meaning of the State procurement laws and regulations shall not be so viewed until and unless they are certified as such by the Office of Minority Business Enterprise/Equal Opportunity. The assigned certification number must appear on invoices.

29. **Minority Business Enterprise Subcontract Participation Goal**

An overall **Minority Business Enterprise (MBE) subcontract participation goal of 30%** of the total contract dollar amount for each area has been established for this procurement with no sub-goals.

By submitting a response to this solicitation, the Bidder agrees that these dollar amounts of the contract shall be performed by MDOT certified minority business enterprises.

Refer to the MBE participation instructions in Attachment 12.

30. **Protests**

Any Bidder or other interested person who is aggrieved by the award or proposed award of the Contract resulting from this solicitation may protest that decision. Please note that the Maryland Board of Public Works does not have jurisdiction to consider protests relating to this solicitation or an award of contract under this solicitation.

All protests relating to this solicitation, the selections and/or award must be filed in writing with the Administration's Procurement Officer, and within the time limitation set forth in the code of Maryland Regulations (COMAR) 21.10.02. Bid protests shall be filed not later than seven (7) days after the basis for protest is known, or should have been known, whichever is earlier. Oral protests will not be considered.

The specific details of the protest procedures to be followed by aggrieved actual or prospective bidders are contained in COMAR 21.10. A written summary of this procedure will be provided, upon request, by the Contract Administration Department of the Maryland Transit Administration in the above address.

31. Public Information Act Notice

Bidders should give specific attention to the identification of those portions of their bids 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. Bidders are advised that, upon request for this information from a third party, the MTA is required to make an independent determination as to whether the information may or must be disclosed to the requesting party.

32. State Ethics Law

Under State Government Article, § 15-508, Annotated Code of Maryland, a Bidder who employs an individual who assists the Agency in drafting specifications for an invitation for bids or a request for proposals for a procurement may not submit a bid or proposal for the procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. A Bidder with any questions regarding the applicability of this provision of the State Ethics Law in connection with this procurement should contact the State Ethics Commission, 9 State Circle, Suite 200, Annapolis, Maryland 21401 (telephone: (410) 974-2068).

33. Prospective Bidders

Prospective Bidders are those persons or firms who: (i) were sent this IFB; (ii) requested this IFB in writing; or (iii) otherwise obtained this IFB and notified the Procurement Officer in writing that they obtained this IFB.

34. Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's wage requirement is contained in this solicitation (see Attachment 11 entitled Living Wage Requirements for Service Contracts). If the Bidder fails to submit and complete the required documentation under State law, the State may determine a Bidder to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.49 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value are performed in the Tier 2 Area, a Bidder shall pay each covered employee at least \$9.39 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The contract resulting from the solicitation has been determined to be a Tier 1 contract.

35. Prompt Pay Requirements

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Bidder who is awarded a contract must comply with the prompt payment requirements outlined in the Contract. Additional information is available on the GOMA website at www.mdminoritybusiness.com. (See Attachment 13.)

36. Procurement Schedule (All dates tentative.)

<u>Activity</u>	<u>Date</u>
IFB Advertising Date	August 1, 2012
Pre-Bid Conference	August 15, 2012
Bid Inquiry Deadline (4:00 p.m.)	August 22, 2012
Closing Date for Receipt of Bids (2:00 p.m.)	September 6, 2012
Anticipated Board of Public Works Approval	October 17, 2012

END OF SECTION I

**MARYLAND TRANSIT ADMINISTRATION
MARC RAIL STATIONS SNOW AND ICE REMOVAL
MAINTENANCE SERVICES
PENN CENTRAL REGION**

CONTRACT NO. T-8000-0396

SECTION II – SPECIFIC SOLICITATION REQUIREMENT

A. General Information

1. Contractor shall furnish all necessary labor and equipment with operator, as specified for the “clearing/removal” of snow/ice from all roadways, parking areas, vehicle entrances, sidewalks, handicap ramps, station areas and station platforms for the MTA/MARC Train Service Stations.
2. The Contractor shall provide these services on an as-needed basis.

B. Site Work Specifications

Locations, equipment and handwork requirement is detailed in the Bid Form and Unit Price Schedule in Section IV:

West Baltimore

401 Smallwood Street
Baltimore, MD 21223
2 parking lots
327 parking spaces
2-102' platforms
sidewalks, stairways

and,

Halethorpe

5833 Southwestern Blvd.
Baltimore, MD 21227
4 parking lots
770 parking spaces
2-196' platforms
stairways, driveways, ramps

C. Time Services to be Rendered

1. The Contractor will be notified by phone by the MARC Stations and Facilities Manager (MARC Contact Person) at least two hours before the services are needed. The MARC Contact Person will instruct the Contractor as to which stations need the snow/ice cleared/removed. The MARC Contact Person will also instruct on the laborers, lookouts and equipment needed at each station. The Contractor shall supply the equipment, operators, laborers, lookouts and tools, necessary to perform the required work. Please see Section III, for the requirements per station.
2. The Contractor shall ensure that at each location awarded in the contract, the equipment, operators, and/or labor crews are on site within two (2) hours after notification by the MARC Contact Person.
3. The Contractor shall notify the MARC Contact Person upon arrival at the job site, and again upon completion of the work before departure.
4. All charges/hours for services and/or standby time provided will be verified by the Administration through use of the MARC Contact Person's phone log, random site visits by the Administration's personnel, the MARC Contact Person, and/or cameras at the site.
5. The Administration reserves the right to have this equipment deployed to other properties, should the need arise, before being released. Should this occur, the Contractor will be compensated at the standby rate for travel time.
6. Standby time shall be paid at an hourly rate equal to 50% of the working hourly rate. Standby time is defined as the time designated by the Administration, which is from the time a unit reports for service until that unit is placed into snow/ice operations, in anticipation of a snow/ice storm.
7. All rates quoted are for actual operating and/or work time. No time shall be allowed for traveling to and from assigned snow removal sites.
8. In the event of equipment failure, the Contractor shall attempt to replace or repair the equipment promptly, but the Administration shall not be liable for the time the equipment is out of service. Should a replacement be required, the hourly rate will not start until the equipment arrives at the required location.

D. Invoices and Compensation

1. The Contractor shall within ten (10) working days from completion of the work submit an invoice to the MTA Finance Department. The address is as follows:

**Beverly Hamlin, Project Manager
MARC Train Facilities
1515 Washington Blvd
Baltimore, MD 21230
410-454-7133 (Office)**

2. All invoices must be on the Contractor's letterhead and contain
 - a. the Contractor's Federal Identification Number,
 - b. MTA Contract Number, and
 - c. Invoice Number.

Failure to comply with this item could result in delay of payment.

3. All invoices shall be submitted in the format similar to the Section IV Unit Price Schedule (UPS) detailing the number of laborers, equipment, rates etc...by location for the region including a summarized total.

Invoices must include the names of each of the laborers including lookouts working at each jobsite.

There is equipment identified in the UPS that is not required for each snow event. The MARC Contact Person will instruct the Contractor as to what is needed. Invoiced expenses are to only include equipment and laborers actually used in the event.

4. Salt is not an invoice expense item. Salt is procured through the State Highway Administration (SHA). The MTA will provide the Contractor with the location of a salt dome for pick up. The Contractor will provide the MARC Contact Person with the date and time of pick up.

The Contractor will indicate on the invoice the amount of salt acquired from the dome and the amount used for each snow/ice event.

E. Award of Contract:

The contract duration is for a period of three (3) years as stated in the Notice to Proceed with one (1) two-year option.

F. General Indemnity

1. The Contractor shall indemnify and save harmless, the MTA, and its officers, agents, and employees, from any and all claims, demands, suits, loss, damage injury

and liability, including costs and expenses incurred in connection therewith, however, caused, resulting from, arising out of the contract, including delivery, transporting, loading, unloading, and use of equipment and/or supplies.

2. The Contractor shall, in addition, take all reasonable precautions to protect the Administration's Property during the performance of the contract. The contractor shall, along with an MTA representative, complete an inspection of each station prior to the beginning of the snow season and note any damage to any signs, fencing, curbs and curb-stops. Any un-noted damage to these items at the end of the season, except where others can be shown to be responsible, shall be the Contractor's responsibility to repair. This includes the realignment of all curb stops.
3. The Administration assumes no responsibility whatever for damage(s) to privately owned vehicles on the Administration's Property: and such damage that occurs, shall be solely between the Contractor and the vehicle owner(s).

G. Safety and Training Requirements:

1. **FRA Compliance.** Companies under contract to MTA for MARC Rail Station Snow & Ice Removal services are required to comply with the requirements of the FRA, Roadway Worker Protection, 49 Code of Regulation (CFR), Part 214, including, without limitations, the training and qualification requirements, and with the FRAs On-Track Safety Program. The Contractor will comply with FRAs rule regarding Roadway Worker protection and will also comply with any revisions to Railroads On-Track Worker Safety Program.
2. **Training.** The Contractor shall ensure that all personnel, including any individual who will be in charge of the work group, attend a Safety Course annually presented by MTA prior to working within 15 feet of any railroad tracks. The Contractor shall furnish the MTA with a list of all persons available for Snow/ice Removal prior to the date of training.

The MTA will pay up to four (4) hours per individual for training.

3. **Safety Equipment.** The Contractor shall ensure that all personnel are equipped with the following safety equipment:
4.
 - a. Hard Hats (orange),
 - b. Safety Vests (orange),
 - c. Safety Glasses,
 - d. Safety Boots, and
 - e. Air Horns (for lookouts only).

The safety equipment will be provided by the Contractor at the Contractor's expense. This does not include air horns. The MTA will reimburse the contractor for purchase of air horns meeting the FRA regulations. Appropriate documentation such as the invoice supporting the expense must be included in the MTA's invoice to receive reimbursement.

5. **Railroad Emergency.** The MTA will provide each Contractor's with the Emergency numbers for Amtrak and CSX if an emergency occurs while on site. The lookouts are required to carry a cell phone.
6. **Watch Protection.** The Contractor shall provide watch protection (i.e. watch person or lookouts) during Snow and/or Ice Removal within 4 feet of the near rail.
 - a. Lookouts/Watch protection will stay at least 4 feet from the nearest rail at all times.
 - b. No person will be allowed to be within 4 feet of the nearest rail without watch protection.
 - c. The number will vary at each station due to sight distance. See Section III for each station requirement.
 - d. After cross walks are cleaned and all persons are 4 feet from the nearest track, watch persons will assist in Snow and/or Ice Removal.
 - e. **Contracts for stations on AMTRAK will not require any employee to work within four feet of the near rail.**
 - f. **Lookouts need to carry a cell phone with the Railroad emergency numbers stored on the phone.**
7. **Air Horns.** The Contractor shall ensure that the lookouts carry an Air Horn during operations and are at their designated location prior to commencement of work.

The Contractor shall carry and use an air horn meeting the specifications of FRA regulations for this purpose.

8. No power equipment can be used when working within 4 feet of the rail.
9. **Site Visits.** The Contractor will be required to visit each site location, with a designated MTA representative, prior to the beginning of the work season, to review site conditions, limits of work and location of watch persons.

The Contractor should be aware that fines could be imposed on the Contractor or the individual by FRA for violations concerning adherence to safety rules or failure to train employees.

H. Additional Information:

For information regarding the station locations, conditions, etc, contact:

MARC Facilities Contract Manager:	Beverly Hamlin	202-236-4095
Director of MARC:	John Hovatter	410-245-8218

**MARYLAND TRANSIT ADMINISTRATION
MARC RAIL STATIONS SNOW & ICE REMOVAL MAINTENANCE SERVICES
PENN CENTRAL REGION
CONTRACT NO. T-8000-0396**

SECTION III – INSURANCE REQUIREMENTS

LIABILITY INSURANCE

The following requirements shall prevail:

- A. The Contractor shall forward to the Procurement Officer prior to the execution of the Contract, a certificate of insurance issued by the Insurer (s), including special endorsements. If requested by the Engineer, the Contractor shall provide a certified copy of the actual policies and endorsement in addition to certificates. The contractor shall procure and pay for insurance specified herein issued by companies licensed and authorized to do business in the State of Maryland.

The Contractor shall furnish policies satisfactory to the Administration (hereinafter "Administration" refers to Maryland Transit Administration, Maryland Department of Transportation and the State of Maryland inclusively) as to contents and carrier; such insurance will contain the following provisions:

1. Sixty (60) day's prior notice to the Administration of cancellation.
2. Inclusion of the Administration, Engineer and their directors, officers, representatives agents and employees as additional Insured as respects work or operations in connection with the Contract.
3. Endorsement providing that such insurance is primary insurance and no insurance of the Administration will be called in to contribute to a loss.
4. The Contractor agrees to indemnify, defend, and hold harmless the Administration from and against all loss or expense (including costs and attorney's fees) by reason of liability imposed by law upon the Administration for damages because of bodily injury, including death, at any time arising therefore, sustained by any person or persons or on account of damage to property, including loss of use thereof arising out of or in consequence of the performance of this contract, whether such injuries to person(s) or damage to property is due or claimed to be due to the negligence of the Contractor, the Administration, their agents and employees, except only such injury or damage as shall have been occasioned by the sole negligence of the Administration. The above provisions are to be included in all subcontracts as specified herein under Paragraph D below.

- B. If at any time above-required insurance policies should be canceled, terminated, or modified so that the insurance is not full force and effect as required herein, the Administration may terminate this Contract for default or obtain insurance coverage equal to the required herein, the cost of which shall be charged to the Contractor and deducted from any payments to the Contractor.
- C. Insurance like that required of the Contractor shall be provided by or in behalf of all subcontractors of any tier and other entities to cover their operation(s) performed under this Contract.
- D. Insurance Coverage: The coverage of insurance under such policy or policies shall be at policy limits not less than as specified herein.
1. Worker's Compensation and Employers' Liability (Coverage B): Providing statutory coverage in the State of Maryland, to include all States endorsement, United States Longshoremen and Harbor-Workers' Compensation Act, and employer's Liability (Coverage B), with a minimum limit of \$500,000.00.
 2. An occurrence form Comprehensive General Liability: To include Contractual Liability, Broad Form Property damage, Explosion, Collapse, and Underground Coverage, and Completed Operations Coverage. The Completed Operations Coverage shall remain in effect until two (2) years after the work has been accepted by the Administration. The Comprehensive General Liability Insurance shall have a minimum combined single limit of \$2,000,000.00 and shall at no time have an aggregate limit of less than \$2,000,000.00.
 3. Comprehensive Business Automobile Liability: The policy or policies shall cover all automobiles defined as motor vehicles, whether owned, non-owned leased, or hired, to a minimum combined single limit for Bodily Injury and Property Damage of \$2,000,000.00 and shall include, be endorsement, a waiver of subrogation with respect to the Administration.
 4. Umbrella Liability: Provide an occurrence "umbrella" form of excess liability insurance containing coverage no less restrictive than that required in the underlying policies specified above. The required primary insurance shall be listed as underlying coverage in the first layer umbrella policy. The umbrella policies shall contain a minimum total occurrence and aggregate limit of: \$5,000,000.
 5. Contractor shall maintain in force for the full period of this contract insurance covering losses caused by pollution conditions that arise from

the operations of the contractor described under the scope of services of this contract.

Insurance as required in paragraph 1 shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverage's shall be written in an amount of at least \$5,000,000 per loss, with an annual aggregate of at least \$5,000,000.

The policy of insurance as required in paragraph 1 shall be endorsed to include as an insured the MTA, its officers, and employees.

The policy of insurance as required in paragraph 1 shall be written by an insurer acceptable to the MTA.

If coverage as required in paragraph 1 is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time that work under this contract is completed.

Contractor shall provide to MTA a certificate of insurance documenting the existence of coverage as required in paragraph 1 of this contract. The certificate shall be signed by a person authorized by the insurer to bind coverage on its behalf as described in the certificate. Such certificate shall be delivered to MTA before work under this contract commences.

If the scope of services as defined in this contract includes the disposal of any hazardous or non-hazardous materials from the job site, the Contractor must furnish to the MTA evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the MTA under this paragraph must be maintained in minimum amounts of \$5,000,000 per loss, with an annual aggregate of at least \$5,000,000.

RAILROAD INSURANCE POLICY REQUIREMENTS

The contractor shall maintain insurance for the life of the contract. The following dollar amounts are set as a minimum.

General Liability (General Aggregate/Each Occurrence)	\$5,000,000 / \$1,000,000
Automobile Liability	\$1,000,000
Excess Liability	\$2,000,000
Worker's Compensation & Employers Liability	\$500,000

The contractor shall submit a Certificate of Insurance to the MTA prior to Notice to Proceed. Railroad Protective Liability Insurance is required if the work is done within fifty (50) feet of the track. Railroad Protective Public Liability Insurance (AAR-AASHTO form) as follows: It will also be in the name of the Administration providing a limit of not less than \$5,000,000 per occurrence and not less than \$10,000,000 in the aggregate. An original copy of the policy will be sent to the MTA.

**BID FORM
INCLUDING UNIT PRICE SCHEDULE
MARC RAIL STATIONS SNOW AND ICE REMOVAL
PENN CENTRAL REGION**

CONTRACT No. T-8000-0396

TO: MARYLAND TRANSIT ADMINISTRATION
ATTN: CONTRACT ADMINISTRATION DEPARTMENT
6 ST. PAUL STREET, 7TH FLOOR
BALTIMORE, MD 21202-1614

BID OPENING DATE:

BID OPENING TIME:

2:00PM Local Time

BID OF: _____
(Bidder's Name)

To Whom It May Concern:

1. This bid is hereby submitted to the Maryland Transit Administration (hereinafter sometimes called the "Administration") in response to SOLICITATION INFORMATION AND INSTRUCTIONS dated _____.
2. The UNDERSIGNED has thoroughly examined, acknowledges receipt of, and is familiar with the Contract Documents as well as the various instructions, information, and requirements covering the same, all as mentioned herein and in said SOLICITATION INFORMATION AND INSTRUCTIONS.
3. In compliance with said SOLICITATION INFORMATION AND INSTRUCTIONS the undersigned hereby propose to furnish all labor, equipment, and materials and perform all work described in and in strict accordance with the provisions of the Contract Documents for the consideration of the Unit Prices, total price and list less percentage, listed in the attached Bid Form, and agrees that upon Notice of Award, within ninety (90) calendar days after the date of opening of bids, unless mutually extended, he will within 10 calendar days after receipt of the prescribed forms, execute the Contract.
4. The UNDERSIGNED agrees and understands that the time of completion is as specified in the Special Provisions, unless the completion dates are extended as provided for in the Contract Documents.
5. The UNDERSIGNED hereby certifies that the _____ (Bidder's Name) / is, / is not (CHECK ONE) included on the GSA List of Parties Excluded from Procurement.

AND

The UNDERSIGNED hereby certifies that the _____ (Bidder's Name) / is, / is not (CHECK ONE) included on the List of Contractors suspended or Debarred from Contracting with the State of Maryland.

6. PARENT COMPANY

- a. The UNDERSIGNED represents that it / /is, / /is not, (CHECK ONE) OWNED OR CONTROLLED BY A parent company. For this purpose a parent company is defined as one, which either owns or controls the activities and basic business policies of the UNDERSIGNED. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the bidder, such other company is considered the parent of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.
- b. If UNDERSIGNED is owned or controlled by a parent company, insert in the space below the name and main office address of the parent company.

Name

Address

7. ARREARAGES

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

8. CERTIFICATION OF NON-MARYLAND CORPORATION (FOREIGN CORPORATION)

- a. A corporation not incorporated in the State of Maryland is considered to be a foreign corporation and, therefore, required to be registered with the Maryland State Department of Assessments and Taxation, if awarded this contract.
- b. Where a foreign corporation is currently registered with the Department of Assessments and Taxation, such a bidder shall submit with his bid a copy of the department's certification of his registration or qualification acknowledgement.
- c. If a foreign corporation is not currently registered, such a bidder shall submit with his bid his certification that, if notified of his apparent award of the contract, he will register with the Maryland State Department of Assessments and Taxation and provide a copy of the departments certification of his registration or qualification acknowledgement along with the executed contract.

9. The UNDERSIGNED acknowledges receipt of the following addenda to the Bid Documents (Give the number and date of each).

Addendum No. _____ Dated _____

Failure to acknowledge receipt of all addenda may cause the bid to be considered not responsive to the invitation, which would require rejection of the bid.

10. Documents to be included with the Bid Form: Please provide two (2) copies of your bid.

- A. Bid Form Including Unit Price Schedule (Section IV of this IFB)
- B. Bid/Proposal Affidavit (Attachment 1 of this IFB)
- C. Conflict of Interest Form (Attachment 5 of this IFB)
- D. Experience and Reference Form (Attachment 10 of this IFB)
- E. Living Wage Requirements Affidavit of Agreement (Attachment 11 of this IFB)
- F. MDOT MBE Form Certified MBE Utilization and Fair Solicitation Affidavit (Attachment 12 of this IFB)
- G. MDOT MBE Form B State-Funded Contracts MBE Participation Schedule (Attachment 12 of this IFB)

BID FORM
MARC STATIONS SNOW AND ICE REMOVAL
CONTRACT NUMBER: T-8000-0396

A. PENN LINE STATIONS – CENTRAL REGION

Station	Location & Specifications	Equipment/Laborers	Quantity
West Baltimore	401 Smallwood Street Baltimore, MD 21223 2 parking lots 327 parking spaces 2-102' platforms sidewalks, stairways	*Loader (1.5 yards minimum)	1
		4x4 Pick-up truck w/ plow & salt spreader	2
		Snow Blower Minimum 5HP	2
		Laborers	3
Halethorpe	5833 Southwestern Blvd. Baltimore, MD 21227 4 parking lots 770 parking spaces 2-196' platforms stairways, driveways, ramps	*Loader (1.5 yards minimum)	2
		4x4 Pick-up truck w/ plow & salt spreader	3
		Snow Blower Minimum 5HP	2
		*Dump Truck Minimum 10k lb w/plow & hydraulically operated salt spreader	1
		Laborers	4

*These pieces of equipment should be available if needed. MARC contract person will advise if this equipment is needed.

PENN LINE STATIONS – CENTRAL
UNIT PRICE SCHEDULE

YEAR 1

Equipment/Labor Requirements	Quantity (A) (1)	Hourly Rates (B) (2)	Estimated Hours (C) (3)	Total Cost (4) = (1) *(2) *(3)
*Loader (3/4 yards minimum)	0		160	
*Loader (1.5 yards minimum)	3		160	
4x4 Pick-up truck with plow and salt spreader	5		160	
*Dump Truck Minimum 10k 1b w/plow & hydraulically operated salt spreader	2		160	
Snow Blower Minimum 5HP	4		160	
Laborers (D)	8		160	
Total Estimated Costs Year 1				

YEAR 2

Equipment/Labor Requirements	Quantity (A) (1)	Hourly Rates (B) (2)	Estimated Hours (C) (3)	Total Cost (4) = (1) *(2) *(3)
*Loader (3/4 yards minimum)	0		160	
*Loader (1.5 yards minimum)	3		160	
4x4 Pick-up truck with plow and salt spreader	5		160	
*Dump Truck Minimum 10k 1b w/plow & hydraulically operated salt spreader	2		160	
Snow Blower Minimum 5HP	4		160	
Laborers (D)	8		160	
Total Estimated Costs Year 2				

YEAR 3

Equipment/Labor Requirements	Quantity (A) (1)	Hourly Rates (B) (2)	Estimated Hours (C) (3)	Total Cost (4) = (1) *(2) *(3)
*Loader (3/4 yards minimum)	0		160	
*Loader (1.5 yards minimum)	3		160	
4x4 Pick-up truck with plow and salt spreader	5		160	
*Dump Truck Minimum 10k 1b w/plow & hydraulically operated salt spreader	2		160	
Snow Blower Minimum 5HP	4		160	
Laborers (D)	8		160	
Total Estimated Costs Year 3				

*These pieces of equipment shall be available if needed. MARC contact person will advise if this equipment is needed.

Notes:

(A) Quantity is based on station requirements.

- (B) Rates include the use of hand tools and/or salt spreader.**
- (C) Estimate 20 Snow Storms and 8 hours per day. Invoiced amounts will be based on actual hours worked.**
- (D) Contractor shall obtain salt from SHA salt dome in close proximity to stations. Contractor shall indicate on invoice amount of salt acquired from the dome and used for each snow/ice event.**

**PENN LINE STATIONS – CENTRAL
UNIT PRICE SCHEDULE**

COST FOR YEAR 1: \$ _____

COST FOR YEAR 2: \$ _____

COST FOR YEAR 3: \$ _____

TOTAL COST OF YEAR 1, 2 AND 3: \$ _____

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION

SAMPLE CONTRACT AGREEMENT

FOR

MARC RAIL STATIONS SNOW AND ICE REMOVAL
PENN CENTRAL REGION

CONTRACTOR: CONTRACT NO.: T-8000-0396
DATE: _____

THIS CONTRACT, made and entered into as of the above date by and between the **MARYLAND TRANSIT ADMINISTRATION**, an instrumentality of the Department of Transportation of the State of Maryland (hereinafter called the "Administration"), and

_____ a _____
hereinafter called "Contractor").

Contractor covenants and agrees to perform all obligations of Contractor set forth in this Contract and in the documents listed below, which documents are incorporated herein by reference and which documents together with this Contract are hereinafter called "Contract Documents" and are the Order of Precedence:

CONTRACT AGREEMENT AND AFFIDAVIT
SCOPE OF WORK
GENERAL CONDITIONS FOR MAINTENANCE SERVICE
BID FORM INCLUDING UNIT PRICE SCHEDULE
BID/PROPOSAL AFFIDAVIT
EXPERIENCE AND REFERENCE FORM
ELECTRONIC FUNDS TRANSFER PAYMENTS
INSURANCE CERTIFICATE
LIVING WAGE REQUIREMENTS FOR SERVICE/MAINTENANCE CONTRACTS

PERIOD OF PERFORMANCE: **THREE (3) YEARS** FROM NOTICE TO PROCEED WITH ONE (1) TWO-YEAR OPTION.

LIQUIDATED DAMAGES: N/A

T-8000-0396

1 of 2

COMPENSATION:

In consideration of the faithful performance of all of Contractor obligations hereunder, the Administration shall pay to Contractor the compensation specified in the Unit Price Schedule/Bid Form.

Aggregate Contract Amount: _____

ADDRESSES:

Contractor:

Administration:

Department of Transportation
Maryland Transit Administration
6 Saint Paul Street
Baltimore, MD 21202-1614

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

WITNESS:

BY: _____
(Signature)

(Federal Tax I.D. Number) _____
(Printed Name)

Title: _____

WITNESS:

MARYLAND TRANSIT ADMINISTRATION

BY: _____
(Signature)

James Lee Knighton
(Printed Name)

Title: Director, Procurement Division

Approved as to Form and Legal Sufficiency:

APPROVED BY BOARD OF PUBLIC WORKS

Date: _____ Item No: _____

Assistant Attorney General

ATTACHMENT 1

Bid/Proposal Affidavit.

A. Each solicitation shall provide notice that the affidavit in §B of this regulation shall be completed and submitted to the procurement agency with the vendor's bid or offer.

B. Mandatory Solicitation Addendum. The solicitation addendum shall be in substantially the same form as follows:

BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of

free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Contract Affidavit

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____
Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$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.

D. 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.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

(2) By submission of its 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 who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Attachment 3

REQUEST FOR EXCEPTION/APPROVED EQUAL/CLARIFICATION

CONTRACT No.: T-8000-0396

NAME OF BIDDER:

TITLE OF DOCUMENT REFERENCE:

TYPE OF VEHICLE/EQUIPMENT:

PAGE & REFERENCE:

CONTRACT DOCUMENT REQUIREMENT:

BIDDER'S REQUEST:

APPROVED _____ DISAPPROVED _____

MTA RESPONSE:

NOTE:

Any request for an Approved Equal or Exception to the Specifications must be fully supported with technical data, test results and any other pertinent information available, as evidence that the substitute offered is equal to or better than the Specification Requirement. The MTA may require a bidder offering a substitute to supply additional descriptive material, a sample and/or a demonstration.

PRE-BID CONFERENCE RESPONSE FORM

**T-8000-0396 - MARC RAIL STATIONS SNOW AND ICE REMOVAL
MAINTENANCE SERVICES PENN CENTRAL REGION**

DATE: August 15, 2012

TIME: 10:00 AM

**LOCATION: MARYLAND TRANSIT ADMINISTRATION
6 Saint Paul Street, 7th Floor
BALTIMORE, MD 21202**

Company Name: _____

Contact Name/Title: _____

Company Phone/Fax/E-mail _____

**Names/Titles of Associates Attending Pre-Bid Conference
(Limited to two (2) members)**

1. _____

2. _____

**Please fax Pre-Bid Conference Response Form to
Karen Elsey at 410-333-4810 or call for reservation at 410-767-3591
no later than August 14, 2012.**

CONFLICT OF INTERESTAFFIDAVIT/DISCLOSURE

- A. "Conflict of Interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair advantage.
- B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, Offeror, Contractor, consultant or subcontractor or sub consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The bidder of Offeror warrants that, except as disclosed in § D, below, there are no revenant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail-attached additional sheets if necessary):
- E. The bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date if this affidavit, the bidder or Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLDEGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative or Affiant)

Attachment 6

ELECTRONIC FUNDS TRANSFER

PAYMENTS TO CONTRACTORS BY ELECTRONIC FUNDS TRANSFER

Every solicitation for a contract expected to exceed \$200,000 is required to contain the following provision:

The Bidder agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Bidder shall register using the attached form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

Once a contractor registers to receive payments electronically, all State payments to the contractor (including payments under other State contracts regardless of value) will be disbursed via electronic funds transfer.

The following form should be used to apply for Electronic Funds with the State Comptroller's Office.

**State of Maryland
Comptroller of Maryland**

Vendor Electronic Funds Transfer (EFT) Registration Request Form

Date of request _____

Business identification information (Address to be used in case of default to check):

Business name _____

Address line 1 _____

Address line 2 _____

City _____ State _____

Zip Code □□□□□ - □□□□

Business taxpayer identification number:

Federal Employer Identification Number: □□ □□□□□□

(or)

Social Security Number: □□□ □□ □□□□

Business contact name, title and phone number including area code. (And address if different from above).

Financial institution information:

Name and address _____

Contact name and phone number including area code _____

ABA number □□□□□□□□

Account number □□□□□□□□□□□□□□□□

Account type

Checking

Money Market

A VOIDED CHECK from the bank account must be attached.

Transaction requested:

1. _____ Initiate all disbursements via EFT to the above account.

2. _____ Discontinue disbursement via EFT, effective _____.

Attachment 6

3. _____ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account must be attached.

I am authorized by

* _____ (hereinafter company)

To make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company's account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

*Name of registering business entity

Signature of company treasurer, controller or chief financial officer and date

Completed by GAD/STO

Date

received _____

GAD registration information verified _____ Date to STO _____

STO registration information verified _____ Date to GAD _____

R*STARS Vendor No. and Mail Code Assigned:

_____/_____/_____

State Treasurer's Office approval date

General Accounting approval date

To Requestor:

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller's and Treasurer's Offices to process you request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

Please submit form to:

EFT Registration, General Accounting Division
Room 205, P.O. Box 746
Annapolis, Maryland 21404-0746
COT/GAD X-10

Substance Abuse Prevention

MTA'S CONTRACTORS COMPLIANCE REQUIREMENTS

- A. The Federal Transit Administration requires that any contractors employed to "STAND IN THE SHOES" of MTA Safety Sensitive employees must be in compliance with 49 CFR Part 40, (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 49 CFR Part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations) at the risk of cancellation of the contract. The contractor must also comply with any amendments or revisions to 49 CFR Parts 40 and/or 655 which could become effective during the contract period. MTA is responsible to assure such compliance and will do so via on-site audits of personnel, facilities, record keeping and reporting requirements as well as monitoring various monthly and quarterly reports. The definition of FTA Safety Sensitive function and covered employee is set forth in 49 CFR part 655.4, definitions.
- B. Any MTA Senior Manager responsible for administering a contract which meets the quoted criteria of "A", above, or who is responsible for the procurement of such a contract after 01/01/95 is responsible for:
1. Notifying in writing all contract service and maintenance providers of applicable regulatory requirements and the need for compliance.
 2. Providing each contractor with a copy of the regulatory requirements.
 3. Requiring each contractor to sign a "Confirmation of Receipt" form acknowledging receipt of the regulations.
 4. Informing contractors of their record keeping and reporting requirements to the MTA, including retention of records, quarterly Management Information System (MIS) reporting on drug and alcohol results, quarterly certification of compliance, and monthly completion of the MTA date and time analysis report. Other reporting requirements may be directed by the MTA at any time.
 - 4a. Retention of record requirements as listed in subpart H-Administrative Requirements of 49 CFR Part 655.71.
 - 4b. Management Information System (MIS) requirements as listed in subpart H-Administrative Requirements of 49 CFR 655.72. Contractors shall complete and submit this calendar year report in quarterly increments.

- 4c. Certification of Compliance requirements as listed in subpart I-Certifying Compliance of 49 CFR Parts 655.81 and 655.83. Contractors shall certify their compliance each quarter with submission of their quarterly MIS reports to the MTA. The certification must be authorized by the organizations governing board or other authorizing official.
- 4d. The Monthly Date and Time Analysis report requires that each contractor update and maintain a Microsoft Office Excel spreadsheet on FTA drug and alcohol testing based upon random, post accident and reasonable suspicion directed testing. This report shall be submitted to the MTA by the 15th of the month following the month of record. This spreadsheet shall capture the name, date of hire, type of testing, date & time the testing appointment form was issued by a supervisor, time of arrival & departure at the collection center, specimen collection time, and work schedule of the employee tested.

C. The contractor shall establish and maintain a "Stand in the Shoes" policy in accordance with 49 CFR Parts 40 and 655 which shall contain:

- 1. A policy statement regarding drug use and alcohol misuse. The policy must contain the required elements of an anti-drug use and alcohol misuse program as outlined in 49 CFR Parts 655.12, 655.15, and 655.16
- 2. An employee training and education program which meets the requirements of 49 CFR 655.14.
- 3. A testing program for covered employees as described in 49 CFR 655 Subparts C and D which meets the requirements of this part and 49 CFR Part 40.
- 4. Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional consistent with 49 CFR Part 40.

This policy must comply with requirements of the MTA Medical Services Section in determining FTA compliance. Contractors shall comply with modification and policy revision requests as deemed appropriate by MTA Medical Services.

- D. The MTA designee responsible for contractor administration shall register contractors required to establish and maintain the above FTA drug and alcohol compliance policy. Contractor shall provide names, addresses and telephone numbers for the persons responsible for monitoring and maintaining daily compliance.
- E. MTA contractors, which fall under FTA Authority, shall comply with all sections of 49 CFR Parts 40 and 655. MTA shall monitor compliance through on-site audits of personnel, facilities, record keeping and reporting requirements. Corrective action may be directed by the MTA at any time to ensure policy compliance or as otherwise required. Failure on the part of any contractor to comply with the requirements as outlined in this Appendix C, denying on-site access of MTA personnel to records, reports, and

supporting documentation, or failing to implement and maintain corrective action determined necessary by MTA, may result in the suspension of payment(s) until such time corrective action complies with MTA requirements. Further, failure to comply with the requirements in this Appendix C may result in the loss or suspension of the contract.

- F. Contractors who outsource all or any portion of their drug and alcohol prevention program responsibilities to consultants, consortiums, third party administrator's (TPA) or others shall ensure that those parties will cooperate and comply with the requirements applicable to MTA contractors as contained herein.
- G. Any contractor subcontracting any portion of its transit service contractual responsibilities (i.e. paratransit utilizing subcontracted vans and/or taxi cabs) shall ensure at it's own expense, that their 'subcontractors' are in full compliance with 49 CFR Parts 40 and 655. Further, all reporting, documentation, retention of records, access to records, on-site auditing by MTA, and access to any documentation to support FTA compliance as described herein Appendix C, is made available to the MTA. Any failure to comply or cooperate with the MTA may result in the suspension of payment to the contractor and may result in the loss or suspension of the contract.
- H. [For the purposes of paragraph G above, and its impact on subcontracting with taxi drivers and other transportation providers, the FTA final ruling of Regulatory Information is provided for your review. Published on April 30, 2001, this ruling can be found in the notice of proposed rulemaking (NPRM) proposing changes to conform its drug and alcohol testing regulation (49 CFR Part 655) to the December 19, 2000 revision of DOT's transportation workplace testing procedures at 49 CFR Part 40.]

“The intent of FTA’s regulatory scheme is not to impose federal regulations on the taxi industry; however, taxi companies that contract with transportation service providers receiving federal transit funds are subject to compliance with the drug and alcohol rules. FTA policy continues to recognize the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. Therefore, the drug and alcohol testing rules apply when the transit provider enters into a contract with one or more entities to provide taxi service. The rules do not apply when the patron (using subsidized vouchers) selects the taxi company that provides the transit service”.

Attachment 8

MTA-OFFICE OF SAFETY & RISK MANAGEMENT

CONTRACTOR SAFETY REQUIREMENTS:

Safety oversight of contractor operations is a very important element of the MTA's System Safety Program Plan. Ensuring that our system is operated safely, the system includes, people, equipment, facilities and environment the in which we operate. Therefore Safety oversight of contractor operations includes but may not be limited to:

1. Scheduled and non-scheduled audits and inspections of work policies, procedures, and practices (including those related to maintenance activities performed under the contract). Records and signatures verifying work orders and practices will be reviewed for accuracy. The MTA may also request at any time an investigation of accidents/incidents related to or affecting MTA operation and services. Submittal of accident/incident reports forwarded to the MTA Office of Safety and Risk Management. Notification of accidents within a 24 hour period. Fatalities, multiple injuries, or in excess of \$ 100,000 in property damage should be reported within a 2-hour period. The dispatcher/ company designee is responsible for coordinating and monitoring emergency efforts. The contractor shall provide the MTA with all applicable information the MTA deems necessary to conduct an accident/incident investigation (if necessary) and to ensure similar events do not occur.
2. Audits of employee and qualifications, training and present and past operating records of personnel directly involved with MTA operations and services. It is the responsibility of the contract provider to randomly review employee records and inform MTA of these reviews and to investigate any irregularities or disparities found.
3. Development and implementation of training agendas for employees. Training may address a variety of topics, but as a minimum will pertain to the correct use of emergency equipment, emergency preparedness, response and recovery procedures (including those related to hazardous material situations), and communications. Regulatory requirements for testing and certification (CDL & Substance Abuse Policies) will be maintained.
4. Participation in implementing MTA's EPPs, SOPs, and EOPs. Training and updates will be developed and provided as necessary to ensure all personnel remain cognizant of the most accurate and up to date information.
5. Contractor shall submit a safety, maintenance (both vehicle and facility maintenance programs), training, QA/QC, and operations management plans for MTA approval that effectively addresses all SSPP safety elements.
6. Minutes of Contractor employee safety meetings shall be sent to the MTA Safety Department for review. The MTA Safety Department should periodically attend contractor safety meetings to support MTA safety priorities.

Attachment 8

CONTRACTOR MUST PROVIDE EMPLOYEES WITH:

- a. Training related to passenger safety awareness, and passenger security.
- b. Training involving the System Safety Program Plan that includes security
- c. Participation in emergency response management drills with MTA and local emergency response providers such as local police and fire departments.
- d. Periodic audits and inspections of equipment, maintenance facilities, and other properties deemed necessary by the MTA. Periodic ride conducted on service to assess employees' performance and equipment condition checks may also be made.

Attachment 9

MARYLAND DEPARTMENT
OF TRANSPORTATION

GENERAL CONDITIONS
FOR
MAINTENANCE SERVICE

T8000-0396

Revised: July 5, 2002

MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS FOR MAINTENANCE CONTRACTS

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Revised July 5, 2002

MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS FOR MAINTENANCE CONTRACTS

1. **Definitions**

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

B. **Organizational Structure**

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

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

C. **Definitions**

Agreement – Contract.

Award – The decision by a Jurisdiction to execute a purchase agreement or contract after all necessary approvals have been obtained.

Bid/Offer – A statement of price, terms of sale, and description of the supplies, services, or construction related services submitted to the State, in response to an Invitation for Bids or offers under procurement by competitive sealed bidding or comparable small procurement procedures.

Board – The Board of Public Works of the State of Maryland.

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

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

Code – The Annotated Code of Maryland.

COMAR – Code of Maryland Regulations.

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

Contract – Any agreement entered into by a Jurisdiction for the acquisition of supplies, services, construction, or any other item, including:

- (1) Awards and notices of award;
- (2) Contracts of a fixed-price, cost-reimbursement, cost-plus-a-fixed-fee, fixed-price incentive, or cost-plus incentive fee type;
- (3) Contract providing for the issuance of job or task orders;
- (4) Leases;
- (5) Letter contracts;
- (6) Purchase orders;
- (7) Supplemental agreements with respect to any of these;
- (8) Orders; and
- (9) Grants.

Contract does not include:

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

Contract Affidavit – An affidavit in compliance with, and in substantially the same form as set forth in COMAR 21.05.08.07 and any amendments thereto.

Contract Drawing – See “Plans”

Contract Modification – Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the Contract. It includes Change Orders, Extra Work Orders, Supplemental Agreements, Contract amendments, reinstatements, or options/renewals.

Contractor – Any person (see definition of Person) having a contract with a Jurisdiction. Contractor does not include any employees claiming such status pursuant to any collective bargaining agreement.

Day – Calendar day unless otherwise designated.

Department – The Maryland Department of Transportation (MDOT).

Engineer – Any person designated by the Jurisdiction or the Procurement Officer, acting directly or through the duly authorized representative, such representative acting within the scope of the assigned duties or authority.

Extension – As applied to contracts for the performance of maintenance work or services, means a change in the scope of services to be performed by the Contractor by including in the Contract a requirement for the performance of phases of services not previously included.

Extra Work Order – Change Order

Firm – Business

Inspector – The authorized representative of the procurement officer assigned to make detailed inspections of any or all portions of the work, or materials thereof.

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

Jurisdiction – Any one of the above Administrations or Authorities within the Maryland Department of Transportation, as listed in Section 1.B.

Maintenance – Any work or services necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, including built-in equipment or an in-ground system.

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

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

Notice to Proceed – A written notice to the Contractor of the date on or before which the Contractor shall begin performing the work to be done under the contract.

Offeror – A person or entity that responds to a Proposal and desires to enter into a contract with the Department.

Payment Bond – Security as stated in COMAR 21.06.07.01B as a guarantee that Contractor will pay in full all bills and accounts for materials and labor used in the work, as provided by law.

Performance Bond – Security as stated in COMAR 21.06.07.01B, guaranteeing complete performance of the Contract.

Person – Any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club or other organization or legal entity.

Plans – The official drawings issued by the Jurisdiction as part of the contract documents, including those incorporated in the contract documents by referenced.

Price Proposal – A contractor written price derivation response, with required support documentation and affidavits, to a Department request for price from a Contractor technically selected for a specific Project. The Price Proposal shall be signed by the person(s) required to legally bind the Contractor to the proposal.

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

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

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

Quotation – Bid/Offer

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

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

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

Secretary – The Chief Executive Officer of the Maryland Department of Transportation.

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

Specification – A written description of functional characteristics, or the nature of an item to be procured. It may include a statement of any of the user’s requirements and may provide for inspection, testing, or preparation of an item before procurement. Procedures to accomplish tasks may be included.

Solicitation – Invitation for bids, Request for Proposals, or any other method or instrument used to provide public notice and advertisement of a Jurisdiction’s intent to procure supplies, services, and construction.

State – The State of Maryland acting through its authorized representative including any Jurisdiction as listed in Section 1.B.

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

Subcontractor – Any person undertaking a part of the work under the terms of the Contract, by virtue of an agreement with the Contractor, who, prior to such undertaking, receives the approval of the surety and the Jurisdiction.

Superintendent – The executive representative of the Contractor authorized to receive and execute instructions from the Procurement Officer, and/or Inspector who shall supervise and direct the work.

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

Supplemental Specification – Additions and revisions to the Standard Specifications. Generally include five (5) new or improved procedures, construction items or materials developed subsequent to the publication of Standard Specifications.

Work – The furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.

D. Any reference to one gender shall be deemed to include the other gender, unless the Contract clearly requires otherwise.

2. Preparation of Bid/Proposal

Offeror shall submit its bid/proposal upon the forms furnished by the Jurisdiction, carefully following bid preparation instructions provided. A completed Bid/Proposal Affidavit is an essential part of the proposal submission. A completed Contract Affidavit will be required of the successful Offeror before issuance of notice to proceed.

Offerors should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets and provide any written justification of why such materials, upon request, should not be disclosed by the State under the Maryland Public Information Act, Section 10-611 et seq. of the State Government Article of the Annotated Code of Maryland.

3. Site Investigation

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the State, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the State.

4. Bid, Performance and Payment Bonds

A. **Bid Bonds**

If required for a procurement in excess of \$100,000, a proposal shall not be considered unless accompanied by a guaranty in an amount not less than 5% of the amount bid, and made payable to the State of Maryland.

B. **Performance Bonds**

A performance bond may be required for maintenance contracts in excess of \$100,000 in the amount equal to at least 100 percent of the Contract price. If required by the Special Provisions of the Contract, the performance bond shall be delivered by the Contractor to the State no later than the time the Contract is executed. If a Contractor fails to deliver the required performance bond, that Contractor's bid shall be rejected, its bid security shall be enforced, and the award of the Contract shall be made to the next lowest responsible and responsive offeror.

C. **Payment Bonds**

A payment bond may be required for a maintenance contract in excess of \$100,000 in the amount equal to at least 100 percent of the Contract price. If required by the Special Provisions of the Contract, the payment bond shall be delivered by the Contractor to the State no later than the time the Contract is executed. If a Contractor fails to deliver the required payment bond, the Contractor's bid shall be rejected, its bid security shall be enforced, and award of the Contract shall be made to the next lowest responsible and responsive offeror.

D. **Acceptable Security**

Acceptable security for bid, performance and payment bonds shall be as set forth in COMAR 21.06.07.01B.

5. Contingent Fee Prohibition

A. The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide agent, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

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

6. Cost and Price Certification

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

7. Contract Administration

This Contract may be administered on behalf of the Department or Jurisdiction as the case may be, by the Procurement Officer.

8. Authority of the Procurement Officer

- A. The Procurement Officer shall decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all plans and/or specifications; and all questions as to the acceptable fulfillment of the terms of the Contract on the part of the Contractor.
- B. The Procurement Officer shall determine the amount of work performed to be paid for under the Contract.
- C. The Procurement Officer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to carry out provisions of the Contract.
- D. The Procurement Officer may authorize progress payments for work satisfactorily completed, subject to such retainage that the Procurement Officer deems appropriate.

9. Corporate Registration and Tax Payment Certification

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

10. Compliance With Laws

The Contractor hereby represents and warrants that:

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

11. Initiation of Work

The Contractor shall not commence performance of the Work or Services until it receives a formal written Notice to Proceed from the Jurisdiction.

12. Notice to Proceed and Completion of the Work

After the Contract has been executed, the Jurisdiction will, within the time limit specified elsewhere in the Contract documents, issue to the Contractor a Notice to Proceed stipulating the date on or before which the Contractor shall begin Work. The specified Contract time shall begin on the first day that the Contract Work (other than the erection of the inspector's office, construction stakeout, and mobilization) actually starts or on the day stipulated in the Notice to Proceed, whichever is earlier. Any preliminary work started, or materials ordered, before receipt of the Notice to Proceed, shall be at the Contractor's sole risk.

The Contractor shall begin Work promptly within the time specified by the Procurement Officer and shall notify the Procurement Officer at least forty-eight (48) hours before starting Work. The Contractor shall submit a progress schedule, in writing, to the Procurement Officer within ten (10) days from the date of the Notice to Proceed. This schedule shall be updated and revised to reflect all changes affecting the job progress.

After the work has once been started, it shall be conducted continuously on all acceptable working days without stoppage until the entire Contract is complete. Should the progress of the Work for any reason be discontinued, the Contractor shall notify the Procurement Officer of his intention to stop and shall also notify the Procurement Officer at least twenty-four (24) hours in advance of resuming operations. Said notification shall be confirmed in writing, by the Contractor.

13. Conformity with Contract Requirements

- A. (1) All Work performed and all materials furnished shall be in conformity with the Contract requirements. In the event the Procurement Officer finds the materials or the finished product in which the materials are used or the Work performed do not conform to the Contract requirements and have resulted in an inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- (2) In the event the Procurement Officer finds the materials or the finished product in which the materials are used are not in conformity with the Contract requirements but that acceptable work has been produced, the Procurement Officer shall then make a determination if the work shall be accepted. In this event, the Procurement Officer will document the basis of acceptance by a change order which may provide for an equitable adjustment in the Contract price. Any action taken pursuant to this paragraph may not result in an increase of the Contract price.
- B. (1) When any article is specified in the Contract by proprietary name, trade name, and/or name of manufacturer with or without the addition of such expressions as "or equal" or "or approved equal," it is to be understood that the article named or the equal thereof is intended, subject to the approval of the Procurement Officer as to the quality thereof; and it is distinctly understood: (a) that the Procurement Officer is to exercise independent judgement in determining, from time to time, whether or not any article proposed to be substituted is the equal of any article so specified; (b) that the decision of the Procurement Officer on all such questions of equality shall be final; and (c) that, in the event of any adverse decision by the Procurement Officer, no claim of any sort shall be made or allowed against the Procurement Officer, or the Jurisdiction, because of such decision.
- (2) The offeror of an article by the Contractor for an article specified will raise the presumption that any such substitution it is for the purpose of saving money. If, in such a case, the article is approved, the Jurisdiction shall be given credit in the amount of the difference between the net cost to the Contractor of the article submitted and the price at which he could have obtained the lowest priced article specified. For convenience in checking the credit, if any, the Contractor shall submit these figures when the offer of substitution is made, and no article shall be considered without such figures.

- (3) The word “article,” wherever used in this Paragraph 13, subsection entitled “Equal or Approved Equal,” shall be taken to mean any article, material or thing.

14. Inspection of Work

All materials and each part or detail of the Work shall be subject at all times to inspection by the Procurement Officer, or other appropriate persons from the Jurisdiction, and the Contractor shall be held strictly to the Contract including allowable tolerances, quality of materials and workmanship, and the diligent execution of the Contract. Such inspection may include mill, plant or shop inspection. Any material furnished under the Contract is subject to such inspection. The Procurement Officer, or other appropriate person from the Jurisdiction, shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Procurement Officer so requests, the Contractor, at any time before the Jurisdiction’s acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After inspection, the Contractor shall restore said portions of the Work to the standards required by the Contract. Should the Work thus exposed or inspected prove acceptable, adjustments in the Contract time and price will be made by Change Order for the uncovering or removing, and the replacing of the covering or making good of the parts removed. Should the Work so exposed or examined prove unacceptable, the uncovering, removing and/or replacing, shall be at the Contractor’s sole expense.

When the United States Government or any railroad, corporation or other agency is to pay a portion of the cost of the Work covered by this Contract, a representative of any such entity shall have the right to inspect the Work.

15. Removal of Defective Work

All Work and materials which do not conform to the requirements of the Contract shall be considered unacceptable, unless otherwise determined acceptable under the provisions in Section 13 herein.

Any defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist, shall be removed and replaced by Work and materials which shall conform to the specifications or shall be remedied otherwise in an acceptable manner authorized by the Procurement Officer. Upon any failure by the Contractor to comply promptly with any order of the Procurement Officer made under the provisions of this Paragraph 15, the Procurement Officer shall have the authority to cause defective Work to be remedied or removed and replaced and unauthorized Work to be removed, and to deduct the costs attributable to such corrective notions from any monies due or to become due to Contractor under this Contract.

16. Discrepancies in Contract Documents

In the event the Contractor discovers any discrepancies in the Contract documents, the Contractor shall immediately notify the Procurement Officer. The Procurement Officer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract. In the event of a conflict between these General Conditions and any other provisions of the Contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

17. Cooperation by Contractor

The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Procurement Officer and the Jurisdiction's inspector in every way possible.

The Contractor shall assign to the Contract, as his agent, a competent superintendent capable of communicating in English, capable of reading and thoroughly understanding the Contract documents, and thoroughly experienced in the type of work being performed, who shall receive instructions from the Procurement Officer or an authorized Jurisdiction representative. The superintendent shall have full authority to execute the orders or directions of the Procurement Officer without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendent(s) shall be furnished irrespective of the amount of Work sublet.

18. Cooperation with Utilities

The Contractor has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions. No additional compensation shall be allowed for normal delays, inconvenience, or damage sustained by the Contractor due to any interference from the said utility appurtenances or the operation of moving them.

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

In the event of interruption to utility service as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with said authority in the restoration of service. No Work shall be undertaken around fire hydrants until provisions for continued services have been approved by the local fire authority.

19. Cooperation Between Contractors

- A. Separate Contractors on adjoining or overlapping work shall cooperate with each other as necessary. Such cooperation shall include but is not limited to, (1) arrangement and conduct of Work, and (2) storage and disposal of materials, etc., by each in such a manner as to not unnecessarily interfere with or hinder the progress of the work being performed by other Contractors. Contiguous Work shall be joined in an acceptable manner.
- B. The Jurisdiction shall have the right, at any time, to contract for and perform other work on, near, over or under the Work covered by this Contract. In addition, other work may be performed under the direction of another Jurisdiction. The Contractor shall cooperate fully with such other contractors and carefully fit its own Work to such other work as may be directed by the Procurement Officer
- C. In the event of disputes as to cooperation, the Procurement Officer shall act as referee and decisions made by the Procurement Officer will be binding. The Contractor shall make no claims against the Jurisdiction for any inconvenience, delay or loss experienced by the Contractor because of the presence and/or operations of other contractors.

20. Jurisdiction Furnished Material

The Contractor shall furnish all materials required to complete the Work, except those specified to be furnished by the Jurisdiction. Materials furnished by the Jurisdiction will be delivered or made available to the Contractor at the point or points specified in the Special Provisions. All costs of handling and placing all materials, after delivery to the Contractor, are included in the Contract price for the item in connection with which they are used.

The Contractor is responsible for all delivered material. Deductions shall be made from any monies due him to make good any shortages and deficiencies, and for any damage which may occur after such delivery from any cause whatsoever, and for any demurrage charges.

In cases where materials are supplied by the Jurisdiction and incorporated in the Contract Work by the Contractor, materials inspection and acceptance will not be a prerequisite for acceptance of the final product as the product pertains to these items.

21. Indemnification and Insurance

A. Responsibility for Claims and Liability

The Contractor(s) shall protect, defend, indemnify, save harmless, release and discharge the Department and the Jurisdiction, their Officers, agents, and employees from and against all claims, suits, judgements, expenses, actions, damages and costs

of every name and description arising out of or resulting from errors, omissions, negligent acts, negligent performance or nonperformance of any rights or obligations of the Contractor or those of his subcontractors, agents or employees under this Contract, or arising from or based on the violation of applicable federal, State or local law, ordinance, regulations, order or decree, whether by himself or his employees or subcontractors.

Further, the Contractor shall pay any claims for personal injury, bodily injury or property damage which the Contractor is legally obligated to pay and shall indemnify the Department and the Jurisdiction, their officers, agents and employees from any third party claim seeking such damages. The provisions of this Paragraph shall survive termination or expiration of this Contract with respect to any liability arising prior to such termination or expiration.

B. Insurance Requirements

The Contractor shall carry and maintain in full force and effect for the duration of this Contract, and any supplement or extension thereto, the insurance coverage sufficient to protect the Department, the Jurisdiction, and the State, and their officers, agents, employees, invitees, successors and assigns, from claims which may arise out of or as a result of the Contractor's activities under this Contract. The Contractor shall obtain and maintain at least the minimum levels of insurance specified, and any other coverage specified by the Department or Jurisdiction, in the amounts specified elsewhere in the Contract documents. The Contractor shall submit to the Department or Jurisdiction a certificate of insurance indicating the existence of coverage required by this provision. Policies shall be issued by an insurance company authorized to do business in the State of Maryland and approved by the Department or Jurisdiction.

(1) Comprehensive General Liability Insurance

Occurrence form of comprehensive General Liability Insurance with Comprehensive Board Form endorsement including, but not limited to, coverage for damage to persons or property arising out of or relating to the performance of work under this Contract by the Contractor, its subcontractors, employees and agents.

(2) Professional Liability Insurance

Professional Liability Insurance Policy which covers the Indemnification Clause of this Contract (Paragraph 21.A above) as it relates to errors, omissions, negligent acts or negligent performance in the Work performed under this Contract by the Contractor, its subcontractors, employees and agents.

(3) Worker's Compensation Insurance

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

(4) Comprehensive Automobile Liability Insurance

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

Prior to the start of Work on any contract, the Contractor shall submit to the Procurement Officer Certificate(s) of Insurance demonstrating that the Contractor carries insurance against the risks and in the amounts specified elsewhere in the Contract. If at any time during the term of the Contract any of the above required insurance policies are canceled, terminated or modified so that the insurance is not in full force and effect as required herein, the Department or Jurisdiction may terminate this Contract for default, or, at its sole option, the Department or Jurisdiction may obtain insurance coverage equal to that required herein, the full cost of which shall be charged and paid for by the Contractor.

22. Responsibility for Damage Claim

- A. The Contractor shall protect, defend, indemnify, save harmless, release and discharge the State and all of its representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the Work or through the use of unacceptable materials in the construction of the improvement, or on account of any act or omission by the said Contractor, or as a result of faulty, inadequate or improper temporary drainage during construction, or on account of the use, misuse, storage or handling of explosives, or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Workers' Compensation Laws, or any other law, bylaw, ordinance, order or decree or any claims, suits, judgements, expenses, actions, damages and costs arising from or based on the violation of any federal, State or local law, ordinance, regulation, order or decree, whether by himself or its employees or subcontractors. The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect or misconduct, in the manner or method of executing said work satisfactorily or due to the non-execution of said Work or at any time due to defective work or materials and said responsibility shall continue until the improvement shall have been completed and accepted.

- B. The Contractor shall not be held responsible for any claims arising from accidents incurred because of any traffic and/or general use permitted during the time the project or any section thereof is open to traffic except from accidents which are attributable to the Contractor's negligence.

23. Assignment

The Contractor shall not assign this Contract in whole or in part, or any monies due or to become due under this Contract without the prior written consent of the Jurisdiction. Any attempted assignment without such consent is void ab initio. In the event that the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause providing that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

24. General Guaranty

Neither the final acceptance of the Work nor payment thereof nor any provision in the Contract documents nor partial or entire use of the Work by the Jurisdiction shall constitute an acceptance of work which is not performed in accordance with the Contract documents or relieve the Contractor of liability for any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the Work, and pay for any damage to other Work resulting from defects in the Work which shall appear within a period of one (1) year from the date of final acceptance of Work, unless a longer period is specified. The Jurisdiction shall give notice of observed defects with reasonable promptness.

25. Final Acceptance and Payment

Upon completion of all the Work under this Contract, the Procurement Officer shall make a final inspection of the entire Work and direct the Contractor to take any corrective action to properly complete the Work. Once the Procurement Officer is satisfied that the Work is properly completed, the Procurement Officer shall certify to the Jurisdiction, in writing, the final acceptance of the entire project. The Jurisdiction, upon receipt and approval of said certificate, shall pay, or cause to be paid, to the Contractor, the whole amount of money then due the Contractor under the terms of the Contract.

26. Personal Liability of Public Officials

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Jurisdiction, Procurement Officer or other authorized representatives, either personally or as officials of the State. It is understood that in all such matters they act solely as authorized agents and representatives of the State.

27. Approval Authority

This Contract is subject to any Change Order, Contract Modification, or amendment thereto, and is subject to the approval requirements established by the Secretary of the Department of Transportation and the Board of Public Works of Maryland. The Contract shall be considered to bind the parties hereto in accordance with the Constitution and Laws of the State of Maryland.

28. Remedies and Termination

A. Termination for Default

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

B. Termination for Convenience of the State

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

29. Delays and Extension of Time

The Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the Work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign

or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or supplies arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

30. Differing Site Conditions

- A. The Contractor shall, within ten (10) days of discovering any of the following conditions, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; (2) unknown physical conditions at the site of an unusual nature, differing materially from those indicated in this Contract; or (3) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. Upon receipt of such written notice, the Procurement Officer shall promptly investigate the conditions, and if he finds such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in A. above; provided, however, the time prescribed therefore may be extended by the State.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

31. Changes

- A. The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - 1. In the specifications (including drawings and designs);
 - 2. In the method or manner or performance of the Work;
 - 3. In the State-furnished facilities, equipment, materials, services, or site; or
 - 4. In any acceleration in the performance of the Work.
- B. Any other written order or an oral order including a direction, instruction, interpretation or determination from the Procurement Officer that causes any such change, shall be treated as a Change Order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a Change Order.

- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a Change Order under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to subparagraph **F.** herein, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly: provided, however, that except for claims based on defective Specifications, no claim for any change under **B.** above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increase cost reasonably incurred by the Contractor in attempting to comply with such defective Specifications.
- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, the Contractor shall, within thirty (30) days after receipt of a written Change Order under **A.** above or the furnishing of written notice under **B.** above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice under **B.** above.
- F. Each Contract modification or Change Order that affects Contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the modification or Change Order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the Contract Modification or Change Order will cause an increase in cost that will exceed budgeted and available funds, the modification or Change Order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.
- G. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

32. Negotiated Payment Provision

If the Contractor is entitled to an equitable adjustment, the Contractor shall be allowed to add the following maximum percentage for overhead and profit to its costs for labor, materials and equipment:

- A. 20% may be added by the Contractor for overhead and profit for work performed by his its forces.

- B. 15% may be added only by the first-tier subcontractor for overhead and profit for work performed by the first-tier subcontractor; the Contractor may add an additional 5% of the first-tier subcontractor's costs for labor, material and equipment.
- C. The provisions of Paragraph 32, **A.** and **B.**, apply only to price adjustments negotiated prior to completion of the added or changed Work and do not apply to work performed on a force account basis as provided for in Paragraph 34.

33. Suspension of Work

- A. The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the Jurisdiction.
- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this Contract or by his/her failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time) an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which any equitable adjustment is provided for or excluded under any other provision of this Contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but no later than the date of final payment under the Contract.

34. Force Account Work

When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable unit prices in the contract, the Jurisdiction and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the Jurisdiction may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:

A. **Labor**

For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work.

B. Materials

For materials accepted by the Procurement Officer and used, the Contractor shall receive the actual cost of such materials delivered to the work site, including transportation charges paid by the Contractor (exclusive of machinery rentals as hereinafter set forth).

C. Equipment

For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Procurement Officer, the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Special Provisions. For the purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.

D. Materials and Supplies Not Incorporated in the Work

For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the Procurement Officer, the Contractor shall receive the actual cost of such materials and supplies used. The Contractor shall receive a reasonable allowance for materials used but not expended in the performance of the Work.

E. Subcontractors

The Contractor shall receive the actual cost of Work performed by a subcontractor. Subcontractor's cost is to be determined as in **A.**, **B.**, **C.** and **D.** above, plus the fixed fee for overhead and profit allowance computed as in **G.**

F. Superintendence

No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

G. Contractor's Fixed Fee

The Procurement Officer and the Contractor shall negotiate a fixed fee for force account work performed pursuant to this Paragraph 34 by the Contractor and any subcontractor(s), as compensation for overhead and profit for the Work performed. Failure of the Contractor and the Procurement Officer to negotiate a fixed fee consistent with applicable cost principles in COMAR 21.09.01, shall be treated as a dispute pursuant to Paragraph 52 herein and in the event of such dispute, the Contractor shall proceed diligently with the performance of the force account work to completion. The Contractor's fixed fee shall include an amount equal to the sum of 65%, of **A.** which shall include, but not be limited to, the following:

1. Compensation for all costs paid to, or on behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed in the Work.
2. Bond premiums, property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work

The Contractor's fixed fee may also include an amount not to exceed 20% of **B.** and 5% of **D.** and **E.** as defined above.

H. Compensation

The compensation as set forth above shall be received by the Contractor as payment in full for Change Order work done on a force account basis. At the end of each day, the Contractor's representative and the Procurement Officer shall compare records of the cost of work ordered on a force account basis.

I. Statements

No payment shall be made for work performed on a force account basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such force account work detailed as to the following:

1. Name, classification, date, daily hours, total hours, rate, and an extension for each laborer or foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices and extensions.
4. Transportation of materials
5. Payments of items under **I.1.** shall be accomplished by copies of certified payrolls. Under **I.2.**, original receipted invoices for rentals must be provided if requested by the Procurement Officer. **I.3.** and **4.** shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work were not specifically purchased for such work but were taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an

affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost. Any request for payment shall be submitted in the order outlined above.

35. Variations in Estimated Quantities

Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 25% above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs solely to the variation above 125% or below 75% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the Procurement Officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgement of the findings justified.

36. Sanctions Upon Improper Acts

In the event the Contractor, or any of its officers, partners, principals or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Contract, the Contract may, in the discretion of the Department, be terminated for default under Paragraph 28A herein. The following sections of the Annotated Code of Maryland and COMAR are incorporated herein by reference:

Section 16-203 of State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.08, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe.

Section 11-205 of State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.08.03 relating to collusion for purposes of defrauding the State .

Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement, and Sanctions".

37. Non-Hiring of Employees

Non employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

38. Conflict of Interest Law

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

39. Registration

Pursuant to Subsection 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 W. Preston Street, Baltimore, Maryland 21201, before doing any inter-state or foreign business in this State. Before doing any intra-state business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

40. Taxes – Responsibility for Payment, Exemption, Forms to be Filed, etc.

The Contractor is responsible for, and by submitting a bid, agrees to pay all retail sales, income, real estate, sales and use, transportation and special taxes applicable to and assessable against any materials, equipment, processes and operations incident to or involved in the work. The Contractor is responsible for ascertaining and acquainting himself with such taxes and making all necessary arrangements to pay same.

The jurisdiction hereby reserves the right to withhold final payment under this Contract until the Contractor and any subcontractor performing any duties under this Contract have furnished or caused to be furnished to the Comptroller of the State of Maryland all properly completed forms required by the said Comptroller and until all of said retail sales and/or use taxes due the State of Maryland by the Contractor have been paid and the Contractor exhibits a release or receipt from the Comptroller evidencing such payment.

41. Tax Exemption

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, and District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in the performance of a Contract, the Contractor shall pay the Maryland sales tax applicable to such material and the State's exemption does not apply.

42. Specifications

All materials, equipment, supplies of services shall conform to federal and State laws and regulations and to the Specifications contained in the solicitation.

43. Delivery

Delivery shall be made in accordance with the Contract Specifications. The State reserves the right to test any materials, equipment, supplies or services delivered to determine if the Specifications have been met. Any material that is defective or fails to meet the terms of the Specifications shall be rejected. Rejected materials shall be promptly replaced by the Contractor or, in the Jurisdiction's sole discretion, by the Jurisdiction at the Contractor's sole cost. In the event the Contractor does not replace rejected materials, the State reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid by the Jurisdiction for the replacement plus applicable expenses, if any.

44. Patent, Trade Mark and Copyright Infringements

Contractor shall indemnify, protect, defend and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgement for patent, trademark and copyright infringements, arising out of purchase or use of materials, supplies, equipment or services covered by this Contract. This clause shall control over any other clause herein which may conflict with it.

45. Occupational Safety and Health Act (OSHA)

All materials, supplies, equipment or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

46. Minority Business Enterprise and Affirmative Action

A. This Contract is subject to Executive Order 01.01.1970.15, December 9, 1970; amended by Order 01.01.1976.05, July 9, 1996 (Code of Fair Practices), and COMAR 21.11.04 Contractor's Affirmative Action Plan Review/Approval and Compliance Monitoring Process – DOT. This Contract is also subject to the applicable provisions of Title 14, Subtitle 3 of State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.11.03 Minority Business Enterprise Policies; and COMAR Title 11.01.10 which incorporates by reference the current revision of the Minority Business Enterprise Program. Copies of the Minority Business Enterprise Program may be requested from the Department of Transportation Fair Practices Officer, 7201 Corporate Center Drive, P.O. Box 548, Hanover, Maryland 21076. This Contract is also subject to all applicable federal and State laws and regulations pertaining to Minority Business Enterprise and Affirmative Action.

- B. To the extent any of the above laws or regulations are applicable to this Contract, they are specifically incorporated herein.

47. Small Business Procurement

If this solicitation indicates that this procurement has been designated for a small business preference, the provisions of COMAR Title 21.11.01.02 pertaining to small business preferences shall apply and are incorporated herein by reference.

48. Non-Discrimination in Employment

A. Compliance with State Law and Regulations

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

B. Compliance with Federal Law

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

The Contractor shall comply with all applicable federal laws pertaining to non-discrimination in employment.

C. Sanctions for Non-Compliance

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

- (1) Withholding of payment to the Contractor under the Contract until the Contractor complies, and/or
- (2) Cancellation, termination or suspension of the Contract in whole or in part.

49. Multi-Year Contracts Contingent Upon Appropriations

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

50. "Buy America Steel" Act

The provisions of COMAR 21.11.02 pertaining to implementation of the "Buy American Steel" Act (State Finance and Procurement Article, Title 17, subtitle 3 of the Annotated Code of Maryland) are incorporated in this Contract by reference.

51. Prevailing Wage Contracts for Public Work

The provisions of State Finance and Procurement Article, Title 17, Subtitle 2 of the Annotated Code of Maryland and COMAR 21.11.11 are incorporated in maintenance contracts of \$500,000 or more, by reference.

52. Disputes

This Contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2 (Dispute Resolution) of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) day of the filing of a notice of claim, but no later than the date of final payment under this Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

53. Liquidated Damages

Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted until completion. For each day that any Work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for

liquidated damages in the amount(s) provided for in the solicitation; provided however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved change orders such liquidated damages are not intended as a penalty but rather as compensation determined in advance for Contractor's failure to fully perform under this Contract.

54. Contractor's Invoices

Contractor agrees to include its federal Tax Identification or Social Security Number on the face of all invoices billed to the State.

55. Financial Disclosure

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

56. Political Contribution Disclosure

The Contractor shall comply Article 33, §§14-101 - 14-104, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 1.

57. Incorporation by Reference

All terms and conditions set forth in the solicitation, any amendments thereto and Contractor's Bid/Proposal, are made a part of this Contract.

58. Maryland Law Prevails

The parties hereby agree that:

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

59. Bid Award – Resident Business

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

60. Payment of State Obligations

- A. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- B. A proper invoice shall include a description of the items of services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract price(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Contractor's federal Tax Identification Number or Social Security Number; the name and address of the proper invoice recipient.
- C. In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest with thirty (30) calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed for more than one (1) year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if a claim has been filed under State Finance and Procurement Article, Title 15, Subtitle 2 of the Annotated Code of Maryland.

- D. For the purpose of this Contract, an amount shall not be deemed due and payable if any of the following apply:
- (1) The amount invoiced is inconsistent with the Contract.
 - (2) The proper invoice has not been received by the party or office specified in the Contract.
 - (3) The invoice or performance under the Contract is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract.
 - (4) The item or services have not been accepted.
 - (5) The quantity of items delivered is less than the quantity ordered.
 - (6) The items or services do not meet the quality requirements of the Contract.
 - (7) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the Contract.
 - (8) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
 - (9) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

61. Pre-Existing Regulations

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

62. Retention of Records

The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or authorized designee, at all reasonable times.

63. General Conditions Controlling

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

64. Dissemination of Information

During the term of this Contract, the Contractor shall not release any information related to the services or performances of the services under this Contract nor publish any final reports or documents.

65. Insolvency

In the event Contractor files a voluntary petition in the Bankruptcy Courts of the United States, Contractor shall notify the Department of Jurisdiction in writing of its intent to file. This notice must be received by not less than ten (10) days prior to such filing. Failure to provide such notice shall be a material breach of the Contract, and in this event, this Contract shall, as a result of such breach, terminate automatically and cease to be of any further force or effect as of the ninth (9th) day prior to such filing. In the event Contractor becomes the subject of any involuntary petition filed in the Bankruptcy Courts of the United States, Contractor shall notify the Department or Jurisdiction of such filing no later than ten (10) days after the petition was filed. Failure to provide such notice shall be a material breach of the Contract, and in that event, this Contract shall, as a result of such breach, terminate automatically and cease to be any further force and effect as of the eleventh (11th) day after such filing.

EXPERIENCE AND REFERENCES

Reference #1

Name _____

Address _____

Contract Person _____

Phone Number _____

Email Address _____

Period of Contract

From: _____

To: _____

Please describe what type of reference: (private or public entity, manufacturing, etc.) this is.

Please describe the nature of the services that you provided.

Reference #2

Name _____

Address _____

Contract Person _____

Phone Number _____

Email Address _____

Period of Contract

From _____

To: _____

Please describe what type of reference: (private or public entity, manufacturing, etc.) this is.

Please describe the nature of the services that you provided.

Reference #3

Name _____

Address _____

Contract Person _____

Phone Number _____

Email Address _____

Period of Contract

From: _____

To: _____

Please describe what type of reference: (private or public entity, manufacturing, etc.) this is.

Please describe the nature of the services that you provided.

**LIVING WAGE REQUIREMENTS FOR SERVICE/
MAINTENANCE CONTRACTS**

- A. This solicitation is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract. The Living Wage Law does not apply to an employee who works less than thirteen consecutive weeks and full-time on a contract subject to the Living Wage.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (A) has a State contract for services valued at less than \$100,000, or
 - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) performs work on a State contract for services valued at less than \$100,000,
 - (B) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) Services with a Public Service Company;
 - (B) Services with a nonprofit organization;
 - (C) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) Services between a Unit and a County or Baltimore City.

Attachment 11

- C. If the Unit responsible for the State contract determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as an independent contractor or assign work to employees to avoid the imposition of any of the requirements of Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the

Attachment 11

State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dlr.state.md.us/> and clicking on Living Wage.

Attachment 11

**Affidavit of Agreement
Maryland Living Wage Requirements-Service/ Maintenance Contracts**

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons: (check all that apply)

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Attachment 11

Affidavit of Agreement (Continued)
Maryland Living Wage Requirements-Service/ Maintenance Contracts

B. _____(initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply)

- ___ All employee(s) proposed to work on the State contract will spend less than one-half of the employee’s time during every work week on the State contract;
- ___ All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; or
- ___ All employee(s) proposed to work on the State contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

MDOT MBE FORM A
STATE-FUNDED CONTRACTS
CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
PAGE 1 OF 2

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

In connection with the bid/proposal submitted in response to Solicitation No. T-8000-0363, I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

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

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

OR

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

2. Additional MBE Documentation

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

- (a) Outreach Efforts Compliance Statement (MDOT MBE Form C - State-Funded Contracts);
- (b) Subcontractor Project Participation Statement (MDOT MBE Form D - State-Funded Contracts);
- (c) MBE 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 MBE participation goal and subgoals, if any.

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

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

3. Information Provided to MBE firms

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

4. Products and Services Provided by MBE firms

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

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
MBE PARTICIPATION SCHEDULE

PART 1 – INSTRUCTIONS FOR MBE 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 1 OF 2

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

1. Please refer to the Maryland Department of Transportation (MDOT) MBE Directory at www.mdot.state.md.us to determine if a firm is certified for the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit www.naics.com. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals.
2. In order to be counted for purposes of achieving the MBE participation goals, the firm must be certified for that specific NAICS (“MBE” for State-funded projects designation after NAICS Code). **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **will not be counted** for purposes of achieving the MBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the **first step** in determining whether an MBE firm is certified and eligible to receive MBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm’s Products/Services Description in the MBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the MBE participation goals.
4. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email at mbe@mdot.state.md.us.
5. The Contractor’s subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet an MBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this MBE Participation Schedule.
6. For each MBE firm that is being used as a supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the MBE participation goals:**
 - A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.
 - B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C **only** if the MBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then **no** MBE participation credit will be given for the supply of these products.
 - C. For purposes of achieving the MBE participation goal, you may count **only** the amount of any reasonable fee that the MBE firm will receive for the provision of such products/supplies - **not** the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the MBE Participation Schedule, please divide the amount of any reasonable fee that the MBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
MBE PARTICIPATION SCHEDULE

PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE

PAGE 2 OF 2

- D. Is the firm certified as a manufacturer (refer to the firm’s NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item E. If the answer is YES, for purposes of achieving the MBE participation goal, you may count the total amount of the subcontract. For Column 3 of the MBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.
- E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the MBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the MBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the MBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
7. For each MBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the MBE participation goals**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

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

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

GOAL/SUBGOAL WORKSHEET	
Total African American Firm Participation (Add percentages listed for African American-Owned Firms in Column 3 of MBE Participation Schedule)	(A) _____%
Total Hispanic American Firm Participation (Add percentages listed for Hispanic American-Owned Firms in Column 3 of MBE Participation Schedule)	(B) _____%
Total Asian American Firm Participation (Add percentages listed for Asian American-Owned Firms in Column 3 of MBE Participation Schedule)	(C) _____%
Total Women-Owned Firm Participation (Add percentages listed for Women-Owned Firms in Column 3 of MBE Participation Schedule)	(D) _____%
Total for all other MBE Firms (Add percentages for firms listed as Other MBE Classification in Column 3 of the MBE Participation Schedule)	(E) _____%
Total MBE Firm Participation (Add percentages listed for all MBE Firms in Column 3 of MBE Participation Schedule)	(F) _____%
The percentage amount in Box F should be equal to the sum of the percentage amounts in Boxes A through E.	

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
MBE PARTICIPATION SCHEDULE

PART 2 – MBE 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 MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY.

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

Please check if Continuation Sheets are attached.

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
MBE PARTICIPATION SCHEDULE
CONTINUATION SHEET

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

LIST INFORMATION FOR EACH CERTIFIED MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY.

COLUMN 1	COLUMN 2	COLUMN 3
		Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal <u>and</u> subgoals set forth in Form A.
NAME OF MBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND MBE CLASSIFICATION	FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUBGOALS, refer to Sections 6 and 7 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 MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
<input type="checkbox"/> Please check if MBE 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.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification _____	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 MBE Participation goal and subgoals, if any) 3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS). _____% Total percentage of Supplies/Products x _____ 60% (60% Rule) _____% (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)

Please check if Continuation Sheets are attached.

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
MBE PARTICIPATION SCHEDULE

PART 3 – CERTIFICATION FOR MBE PARTICIPATION SCHEDULE

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

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

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

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

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MDOT MBE FORM C
STATE-FUNDED CONTRACTS
OUTREACH EFFORTS COMPLIANCE STATEMENT

In conjunction with the offer/proposal submitted in response to Solicitation No. _____, I state the following:

1. Bidder/Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to personally contact the solicited MBE firms:

4. Please Check One:

- This project does not involve bonding requirements.
- Bidder/Offeror assisted MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS)

5. Please Check One:

- Bidder/Offeror did attend the pre-bid/pre-proposal meeting/conference.
- No pre-bid/pre-proposal meeting/conference was held.
- Bidder/Offeror did not attend the pre-bid/pre-proposal meeting/conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MDOT MBE FORM D

STATE-FUNDED CONTRACTS

MBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT

IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD OR THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD. SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED IN THE MBE PARTICIPATION SCHEDULE. BIDDERS/OFFERORS ARE HIGHLY ENCOURAGED TO SUBMIT FORM D PRIOR TO THE TEN (10) DAY DEADLINE.

Provided that _____ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. _____, such Prime Contractor will enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ (if subcontractor previously listed is also the MBE firm, please restate name and provide MBE Certification Number) which will receive at least \$ _____ or ____% (Total Subcontract Amount/Percentage) for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

I solemnly affirm under the penalties of perjury that the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information and belief. I acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes.

PRIME CONTRACTOR	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER)
Signature of Representative: _____	Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____ _____	Printed Name and Title: _____ _____	Printed Name and Title: _____ _____
Firm's Name: _____	Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____	Federal Identification Number: _____
Address: _____ _____	Address: _____ _____	Address: _____ _____
Telephone: _____	Telephone: _____	Telephone: _____
Date: _____	Date: _____	Date: _____

IF MBE FIRM IS A THIRD-TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE MBE FIRM.

MARYLAND TRANSIT ADMINISTRATION

**MARC RAIL STATIONS SNOW AND ICE REMOVAL MAINTENANCE
SERVICES, PENN CENTRAL REGION**

CONTRACT NO. T-8000-0396

Contract Language

Prompt Pay Requirements

1. If a contractor withholds payment of an undisputed amount to its subcontractor, the Agency, at its option and in its sole discretion, may take one or more of the following actions:
 - 1.1 Not process further payments to the contractor until payment to the subcontractor is verified;
 - 1.2 Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - 1.3 Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - 1.4 Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - 1.5 Take other or further actions as appropriate to resolve the withheld payment.
2. An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
3. An act, failure to act, or decision of a procurement officer or a representative of the Agency, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
 - 3.1 Affect the rights of the contracting parties under any other provision of law;
 - 3.2 Be used as evidence on the merits of a dispute between the Agency and the contractor in any other proceeding; or
 - 3.3 Result in liability against or prejudice the rights of the Agency.
4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
5. To ensure compliance with certified MBE subcontract participation goals, the Agency may, consistent with COMAR 21.11.03.13, take the following measures:

5.1 Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

5.2 This verification may include, as appropriate:

5.2.1 Inspecting any relevant records of the contractor;

5.2.2 Inspecting the jobsite; and

5.2.3 Interviewing subcontractors and workers.

5.2.4 Verification shall include a review of:

5.2.4.1 The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

5.2.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

5.3 If the Agency determines that a contractor is in noncompliance with certified MBE participation goals, then the Agency will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action.

5.3.1 Corrective action may include, but is not limited to, requiring the contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

5.4 If the Agency determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency may:

5.4.1 Terminate the contract;

5.4.2 Refer the matter to the Office of the Attorney General for appropriate action; or

5.4.3 Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

5.5 Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.