



Maryland Transportation Authority

INVITATION FOR BID (IFB)

FOR

ELEVATOR REPAIR

LOCATED AT THE

**FORT MCHENRY EAST VENT BUILDING
2310 S. CLINTON STREET
BALTIMORE, MARYLAND 21224**

CONTRACT NO. 30831443

ISSUE DATE: December 15, 2008

WARNING: Prospective bidders who have received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address in order that amendments to this IFB or other communications can be sent to them. Any prospective bidder who fails to notify the Issuing Office with this information assumes complete responsibility in the event that they do not receive communications from the Issuing Office prior to the closing date.

**STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposal solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-537-7501 to the attention of Ms. Anna Lansaw.

Title: FMT ELEVATOR REPAIR

IFB No: 30831443

I. If you are not bidding, please indicate why:

- Other commitments preclude our participation at this time.
- The subject of the contract is not in our business line.
- We lack the experience in the work/ commodities required.
- The scope of work is beyond our current capacity.
- We cannot be competitive. (Please explain below.)
- The specifications are either unclear or too restrictive. (Please explain below.)
- Bid/ Proposal requirements, other than specifications, are unreasonable or too risky. (Please explain below.)
- Time for completion is insufficient.
- Bonding/ insurance requirements are prohibitive. (Please explain below.)
- Doing business with government is simply too complicated.
- Prior experience with State of Maryland contracts was unprofitable or otherwise unsatisfactory. (Please explain below.)
- Other: _____

II. Please explain your response further, offer suggestions, or express concerns. (Use the back for additional information.)

Remark: _____

OPTIONAL:

Vendor Name: _____ Date _____
Contact Person: _____ Phone (____) _____ - _____
Addressor e-mail: _____

KEY INFORMATION SUMMARY SHEET

Invitation For Bid

IFB NO.: **30831443**

IFB Issue Date: **December 15, 2008**

IFB Issuing Office: **Maryland Transportation Authority**
Office of Procurement & Fleet Services

PROCUREMENT OFFICER **Anna M. Lansaw**
Procurement Officer
Office of Procurement & Fleet Services
Office Phone: 410-537-7522
Fax Phone: 410-537-7501
E-mail: alansaw@mdta.state.md.us

MAIL ADDRESS: **Maryland Transportation Authority**
Office of Procurement & Fleet Services
303 Authority Drive
Baltimore, MD 21222

PRE-BID MEETING **December 23, 2008 @ 10:00 AM EST**
Fort McHenry Maintenance Shop
4000 Leland Avenue
Baltimore, Maryland 21224

IFB DELIVERY ADDRESS: **Ms. Terry Niswonger**
Maryland Transportation Authority
300 Authority Drive – 1st Floor Bid Box
Baltimore, MD 21222

CLOSING DATE AND TIME: **January 5, 2009 / 2:00 PM EST**

NOTE

Prospective Offerors who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the IFB or other communications can be sent to them.

Note: This solicitation is subject to cancellation as provided in COMAR 21.06.02.02

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SECTION 1 – GENERAL INFORMATION

1.1 SUMMARY STATEMENT

1.1.1 The Maryland Transportation Authority (Authority) is issuing this Invitation for Bid (IFB) for to repair the control system for the current elevator located at the Fort McHenry Maintenance 2310 S. Clinton Street, Baltimore, Maryland 21224.

1.1.2 The Authority intends to make a single contract award as result of this IFB.

1.2 ABBREVIATIONS AND DEFINITIONS

1.2.1 For the purposes of this IFB, the following abbreviations and terms have the meanings indicated below:

- a) **Authority** – The Maryland Transportation Authority.
- b) **Bidder** – An entity that submits a bid in response to this IFB.
- c) **BPW** - The Maryland Board of Public Works.
- d) **CFMO** – Chief Facility Maintenance Officer.
- e) **Contractor** – The successful bidder that is awarded the contract.
- f) **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- g) **FMT** – The Fort McHenry Tunnel location.
- h) **IFB** – The entire contents of this Invitation For Bids, “Elevator Repair, Contract No. 30831443” including any amendments/addenda thereto.
- i) **Local Time** – Time in the Eastern Time Zone as observed by the State.
- j) **MBE** – Minority Business Enterprises certified by the Maryland Department of Transportation under COMAR 21.11.03.
- k) **Procurement Officer** – The State representative who is responsible for this IFB and for the determination of contract scope issues; also the only State representative who can authorize changes to the contract.

1.3 CONTRACT TYPE

1.3.1 Any contract resulting from this Invitation for Bid shall be a firm fixed-price contract. "Firm fixed-price contract" means a fixed price contract that provides a price that is not subject to adjustment because of variations in the Contractor's cost.

1.4 CONTRACT DURATION

1.4.1 The Contract resulting from this IFB shall be for a maximum of thirty (30) day commencing on or about February 1, 2009 terminating at the end of the thirty (30) from the actual start date.

1.5 CONTRACT ADMINISTRATION

1.5.1 All work associated with this Contract shall be at the direction of the Contract Administrator, Procurement Officer, or their designee.

1.6 PROCUREMENT METHOD

1.6.1 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.

1.7 PROCUREMENT OFFICER

1.7.1 The sole point-of-contact in the State for the purpose of this IFB prior to award of the contract is the Procurement Officer as listed below:

Anna Lansaw, Procurement Officer
Maryland Transportation Authority
Office of Procurement & Fleet Services
303 Authority Drive
Baltimore, MD 21222
Telephone No.: 410-537-7522
Fax No.: 410-537-7501
E-mail address: alansaw@mdta.state.md.us

1.7.2 A Pre-Bid Conference (the "Conference") will be held on December 23, 2008 beginning at 10:00 A.M. (Local time), at the following location:

December 23, 2008 @ 10:00 AM EST
Fort McHenry Maintenance Shop
4000 Leland Avenue
Baltimore, Maryland 21224

1.7.2.1 Attendance at the Conference is not mandatory, but all interested bidders are encouraged to attend in order to facilitate better preparation of their bids. In addition, attendance may facilitate the bidder's understanding of the IFB requirements.

1.7.2.2 As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be posted at www.emarylandmarketplace.com. All prospective bidders are encouraged to be registered on eMaryland Marketplace to receive all posted documentation referring to the IFB.

1.7.3 Site visits are conducted by appointments only. Please contact the following for an appointment:

Mike Darago
Chief Facility Maintenance Officer
Fort McHenry Maintenance Complex
3990 Leland Avenue
Baltimore MD 21224
Phone: 410-537-1269

1.8 CLARIFICATION

1.8.1 It is understood that if there are any omissions and/or unclear requirements, it shall be the responsibility of the bidder to clarify such items with the Authority before submitting a bid. Inquiries must be in writing and directed to Anna Lansaw, Procurement Officer at 410-537-7522 or via fax at 410-537-7501. Any verbal response shall not be binding on the Authority.

1.9 ADDITIONS & DELETIONS

1.9.1 The Authority's Procurement Officer, upon five (5) days written notice to the Contractor, may add or delete any item covered under this proposal. When a unit is added or deleted, a rate adjustment shall be made proportionately.

1.10 CHANGES

1.10.1 The Procurement Officer may make any change in the work within the general scope of the Contract at any time by written order designated to be a change order. 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, an equitable adjustment shall be made and this Contract modified in writing accordingly.

1.11 LIABILITY

1.11.1 The Contractor agrees to assume full responsibility for any and all damage to the property of the Authority, both real and personal, which results from or arises in connection with, the performance of this Contract.

1.11.2 The Contractor hereby agrees to indemnify and save harmless the Authority against all claims, damages, costs, losses and liabilities whatsoever, for any and all injury to persons and property which may arise out of the performance of this Contract.

1.11.3 The Contractor agrees to maintain adequate insurance coverage in order to fulfill responsibility under Section 1.17.

1.12 PROPOSAL/ BID & CONTRACT AFFIDAVITS

1.12.1 The Contractor shall furnish fully executed Bid/Proposal Affidavits and Contract Affidavits on forms supplied by the Authority, which are essential parts of the bid and contract, respectively. The affidavit includes the certification of corporate registration and tax payment, a contingent fee clause and a bribery statement.

1.13 MINORITY BUSINESS ENTERPRISE NOTICE

1.13.1 The Authority hereby notifies all bidders that in regard to any contract entered into pursuant to this advertisement, certified minority businesses will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for an award.

1.14 TOLL FREE PASSAGE

1.14.1 The Contractor shall not be permitted toll free passage in the performance of this work.

1.15 BID DOCUMENTS

1.15.1 All Bids must be on the forms prescribed by the Authority. This means no Bid shall contain or be accompanied by any writing purporting to limit or qualify the Authority's right to accept such Bid or purporting to alter such Bid or any Contract which may be executed pursuant thereto. If, notwithstanding the foregoing, any Bidder shall submit such writing, the Authority may, in its discretion, disregard such writing and accept the Bid without the attempted qualification, limitation, or alteration. The Authority also as an alternative (without any implication that it is necessarily the only alternative), may reject any Bid accompanied by or containing any such writing. Bids may also be rejected if they show any alteration of forms, additions not called for, additional or alternate bids, incomplete bids, erasures, or irregularities of any kind. Each entity who obtains a set of bidding documents will be furnished with such number of Bid forms as may reasonably be required.

1.16 MANDATORY TERMS & CONDITIONS

1.16.1 By submitting a bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have agreed to and accepted all Contract terms and conditions set forth in the standard Contract form and the MDOT General Terms and Conditions for Maintenance.

1.17 INSURANCE

1.17.1 The Contractor shall not commence work under the Contract until the required insurance has been obtained. The Contractor shall furnish to the Authority duly executed certificated of all required insurance on forms satisfactory to the Authority.

1.17.2 The Contractor shall purchase and maintain such insurance as is specified herein which will protect the Authority, its members, employees and agents, as well as the Contractor, from claims which may arise out of or as a result of the Contractor's operations under this contract, whether such operations be by the Contractors, by any subcontractor, by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. This insurance shall be maintained in full force throughout the entire term of the Contract.

1.17.3 The Authority requires the following minimum levels of insurance coverage for the Contract:

1.17.3.1 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

1.17.3.1.1 The successful Contractor shall, at all times, maintain and keep in force such insurance as will protect him/her from claims under the Workers' Compensation Act of the State of Maryland, and maintain and keep in force Employer's Liability insurance at a minimum level of one hundred thousand dollars (\$100,000).

1.17.3.2 COMPREHENSIVE GENERAL LIABILITY INSURANCE

1.17.3.2.1 The successful Contractor shall maintain Comprehensive General Liability insurance in the amount of at least one million dollars (\$1,000,000) combined single limit for bodily injury liability and property damage liability per occurrence and in the aggregate. Such insurance shall specifically include the Comprehensive General Liability Broad Form Endorsement.

1.17.3.3 COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE

1.17.3.3.1 The successful Contractor shall maintain Comprehensive Automobile Liability Insurance (including all automotive equipment owned, operated, rented, or leased) in the amounts of at least one million dollars (\$1,000,000) combined single limit for bodily injury and property damage.

NOTE: The Contractor must submit proof of insurance prior to contract commencing.

1.18 COMMERCIAL NON-DISCRIMINATION CLAUSE

1.18.1 As a condition of entering into this agreement, the company represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title [19 of the State Finance and Procurement Article](#) of the Annotated Code of Maryland. As part of such compliance, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

1.18.2 As a condition of entering into this agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against the company under Title [19 of the State Finance and Procurement Article](#), as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract. The company further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title [19 of the State Finance and Procurement Article](#) of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The company understands and agrees

that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

1.19 PUBLIC INFORMATION ACT NOTICE

1.19.1 A bidder should give specific attention to the clear identification of those portions of its bid that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

1.19.2 Bidders are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information may be disclosed.

1.20 BIDDER RESPONSIBILITIES

1.20.1 The State will enter into contractual agreement only with the selected bidder. The selected bidder/Contractor shall be responsible for all products and services required by this IFB. Subcontractors, if any, must be identified and a complete description of their role relative to the bid must be included in the bid. If a bidder that seeks to perform or provide the services required by this IFB is a subsidiary of another entity, all information submitted by the bidder, such as, but not limited to, references and financial reports, must pertain exclusively to the bidder, unless the parent organization will provide guarantees for the performance of the subsidiary.

1.21 PROTESTS/ DISPUTES

1.21.1 Any protest or dispute related respectively to this IFB or resulting Contract shall be subject to the provisions of COMAR 21.10 Administrative and Civil Remedies.

1.22 MULTIPLE OR ALTERNATE BIDS

1.22.1 A bidder may not submit more than one bid. Multiple or alternate bids will not be accepted.

1.23 TIE BIDS

1.23.1 If a tie bid should occur; tie bids will be determined in accordance with the provisions set forth under COMAR 21.05.02.14 Tie Bids.

1.24 BIDS DUE/ CLOSING DATE

1.24.1 The Bids must be delivered to the 1st Floor Bid Box, located at 300 Authority Drive, Baltimore, MD 21222 by the date specified in the Public Notice. Address to the attention of Ms. Terry Niswonger, Chief of Procurement & Fleet Services.

1.24.2 Bids, requests for withdraws, and modifications not received by the time and at the place indicated are late and may only be considered in accordance with COMAR 21.05.02.10.

1.24.3 All bids must be submitted prior to the bid opening time to be considered responsive. All submittals after 2:00 pm will be considered late and will be returned unopened to bidders.

1.25 DURATION OF BID OFFER

1.33.1 Bids submitted in response to this IFB are irrevocable for one hundred and 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.

1.26 AWARD BASIS

1.26.1 The Contract will be awarded to the responsible and responsive bidder submitting the most favorable evaluated bid price.

1.27 AMENDMENTS & ACKNOWLEDGMEENT OF AMENDMENTS

1.27.1 If it becomes necessary to revise this IFB, amendments will be posted via www.emarylandmarketplace.com and through the Authority's webpage. Acknowledgement of the receipt of all amendments to the IFB must submit with bid package by the bidder. Failure to acknowledge receipt does not relieve the bidder from the complying with all terms of any such amendment.

1.28 PROMPT PAY REQUIREMENTS

1.28.1 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 Offeror 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 H – Prompt Payment Question and Answers.

1.29 TAX EXEMPTION

1.29.1 The Authority is generally exempt from federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Tax 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 and the exemption does not apply.

1.30 RECIPRICAL PREFERENCE

1.30.1 A Maryland resident business that is a responsible bidder under this procurement will be given a resident preference in the event that a responsible bidder whose principal office or principal base of operations is in another state has submitted the lowest bid for this procurement and the other state gives a preference to its residents through law, policy, or practice. Preferences can include any law, policy, or practice that favors a resident over a nonresident.

1.30.2 The preference given to a Maryland resident business offeror shall be identical to the preference that the other state, though law, policy or practice, gives to its residents. The preference will not be given, however, if it conflicts with any federal law or grant affecting the procurement.

1.31 UNAUTHORIZED ELECTRONIC TRANSACTIONS PROHIBITED

1.31.1 An attempt by a bidder or contractor to conduct an electronic procurement transaction may not be considered by the procurement officer unless the solicitation or contract specifically authorizes the electronic means for the specified transaction.

1.31.2 An attempt by a bidder or contractor to conduct a transaction by electronic means, including any acknowledgement, bid, proposal, protest, claim, does not satisfy the requirements of this title unless the solicitation or contract specifically authorizes the use of electronic means for this specified transaction.

1.32 TERMINATION FOR DEFAULT

1.32.1 If the Contractor fails to fulfill its obligation under this contract properly and on time, 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 or omissions relied upon as cause for termination. All finished or unfinished work

provided by the Contract, 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 the 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 21.07.1.11B.

1.33 TERMINATION FOR CONVENIENCE

1.33.1 The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the 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(12).

SECTION 2 – SCOPE OF WORK

2.1 OBJECTIVE

- 2.1.1 The following IFB is for a qualified contractor to remove and replace the existing mechanical selector system for the East Vent Front elevator located in the Fort McHenry Maintenance Building at 2301 S. Clinton Street, Baltimore, Maryland 21224.

2.2 SCOPE OF CONTRACT

- 2.2.1 The Contract shall include all labor, materials, specialized equipment, service and transportation and all other associated costs that may not be listed, necessary to perform the required services under the terms of this Contract, as agreed upon by both parties.
- 2.2.2 The Contractor will remove the existing mechanical selector and replace it with a new digital, microprocessor-based selector. The selector will contain the following or enhance elevator services by:
 - 2.2.2.1 No moving parts on the selector.
 - 2.2.2.2 Ensure accurate floor leveling up to 1/8" increment
 - 2.2.2.3 Enhance elevator performance and elevator reliability.
 - 2.2.2.4 Ensure smooth acceleration and deceleration elevator performance between floor landings in both the up and down directions.
- 2.2.3 Contractor will repair, replace and supplement all equipment and parts to insure efficient and satisfactory performance and operation of the elevator.
- 2.2.4 Contractor will ensure that the new install mechanical selector is fully operating and compatible with current existing equipment to ensure that the elevator is operating correctly. The Authority's Project Manager or designee must review and ensure that elevator is operating prior signing off on the completion of the work performed.
- 2.2.5 Contractor will be responsible for all permits, licenses, fees and sales tax and to give all notices and comply with all counties, State of Maryland, and Federal laws, ordinances, rules and regulations.
- 2.2.6 Contractor will be responsible for the removal and proper disposal of all debris generated by the work performed.
- 2.2.7 All work shall conform to ANSI, A 17.1 of The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, A 17.2 American Standard Practice for the Inspection of Elevators, Inspectors Manual, and the National Fire Protection Association (NFPA) Code.

- 2.2.8 Normal working hours shall be from 7:30 AM to 4:00 PM, Monday through Friday.

2.3 EXISTING WORK STRUCTURES, EQUIPMENT, ETC.

- 2.3.1 The Contractor shall protect all existing structures, equipment, utilities, and improvements in the performance of all of their work.
- 2.3.2 If any existing item has to be removed or altered it shall be performed in such a manner to prevent injury to any persons or damage to any portions of the items which will remain.
- 2.3.3 Any portion of existing items that are repaired or replaced shall match the existing or adjoining items. Such matching work shall be in a condition equal to or better than that which existed before the new work was performed.

2.4 QUALIFICATIONS OF BIDDERS

- 2.4.1 The elevator maintenance contractor shall possess at least five (5) years of continuous immediate prior experience in the maintenance of elevator equipment of this type.
- 2.4.2 He/she shall, also, possess sufficient financial responsibility, technical ability, shop equipment, and technical organization and have demonstrated the ability to maintain elevators of the types covered by these specifications.
- 2.4.3 The bidder shall furnish with his/her bid the following:
- 2.4.3.1 A listing of personnel who will perform the work covered by the contract showing the length and type of experience of such personnel, (any changes that may occur in personnel during the term of the Contract will be made known in writing to the Authority).
- 2.4.4 The names and addresses of at least three (3) other concerns and/or similar institutions for which prior comparable services were rendered by the bidder.
- 2.4.5 The Contractor shall provide elevator technicians who are journeyman mechanics, certified by the National Elevator Industry, Incorporated or have five (5) years documented service in repairing/maintaining elevators of the type and models shown. Such documentation shall be submitted with the bid proposal and updated as required.

2.5 COMPENSATION & METHOD OF PAYMENT

2.5.1 Payment will be made by check, within thirty (30) days upon receipt of an approved invoice from the Contractor.

2.5.2 A single invoice for a lump sum payment will be submitted and invoice will identified the Contract Number: **30831443** and shall be forwarded to:

Anna Lansaw, CPPB
Maryland Transportation Authority
Office of Procurement & Fleet Services
303 Authority Drive
Baltimore, MD 21222

2.5.3 The Contractor agrees to include on the face of all invoices billed to the Authority, its Federal Tax Identification or Social Security Number.

ATTACHMENTS

- Attachment A: Contractor's Bid Sheet
- Attachment B: Bid/ Proposal Affidavit
- Attachment C: Prompt Pay Requirements FAQs
- Attachment D: MDOT Terms & Conditions for Maintenance
Contracts
- Attachment E: Signature Guidelines

CONTRACTOR'S BID SHEET (Attachment A)**BID PROPOSAL of:**

 Company Name & Address

 City

State

Zip

Phone

Fax

Email

THE CONTRACTOR SHALL PROVIDE ALL LABOR, SUPERVISION, MATERIAL, AND EQUIPMENT TO REPAIR THE FRONT EAST VENT ELEVATOR LOCATED AT THE 2301 E. CLINTON STREET, BALTIMORE, MARYLAND AS SPECIFICIED IN SECTION II - SCOPE OF WORK IN THIS SOLICITATION.

All above complete for the Lump Sum Total of \$ _____

This form is to be completed in its entirety without alterations, exceptions or additions.

NOTE: Maryland Transportation Authority is exempt from Maryland Sales and Use Taxes. See attachment.

Do not include tax in bid prices.

Representing the above Company

 SIGNATURE**

FEIN _____

 Print Name & Title

****The person signing this Bid Sheet must be an Officer of the Company, authorized to contract on behalf of the Company or another authorized person whose proof of authority is hereby attached. See Attachment F. (Please attach a notarized copy of said authorization to this Bid Proposal, i.e.; Corporate Resolution)**

**THE MARYLAND TRANSPORTATION AUTHORITY
RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS**

IN WHOLE OR IN PART
Attachment B
BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____

and the duly authorized representative of (business) _____

and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder 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, supplier, 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.

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 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

- (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
- (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for

violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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

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

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)-(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 Sections B and C and subsections (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. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR

21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations).

I CERTIFY THAT:

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

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

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

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

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

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

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

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

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of

the statement required by Section K(2)(b), above;

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

(i) Abide by the terms of the statement; and

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

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

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

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic_____) (foreign_____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government.

I FURTHER ACKNOWLEDGE that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and 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: _____
(Authorized Representative and Affiant)



GUIDE TO PROMPT PAYMENT FOR NON-CONSTRUCTION SUBCONTRACTORS

August 2008

Prompt payment requirements already exist on State-funded construction contracts. Recently, prompt payment requirements became effective on all State-funded non-construction contracts in excess of \$25,000 by agencies that are members of the Governor's Cabinet.

What are my rights as a subcontractor?

Subcontractors on contracts greater than \$25,000 can expect to receive payment for any undisputed amounts after the prime contractor has received a progress payment. Otherwise, a subcontractor can expect to receive written notice from the contractor as to why payment is being withheld.

What are my rights as a Minority Business Enterprise (MBE) or Small Business Reserve (SBR) subcontractor?

MBE and SBR subcontractors have the same rights as those described above. In addition, agencies must notify the Governor's Office of Minority Affairs (GOMA) of any complaint of non-payment of subcontractors with MBE or SBR status.

What are the responsibilities of the prime contractor?

The prime contractor has the responsibility to:

- Pay a subcontractor an undisputed amount to which the subcontractor is entitled; OR
- Notify the subcontractor in writing and state the reason why payment is being withheld.
 - If payment is withheld, the prime contractor must provide a copy of the notice to the procurement officer.

What should I do if I am not being paid by the prime contractor?

The subcontractor must notify the procurement officer. GOMA recommends that notice be given in writing. The notice will include:

- The name of the prime contractor from which payment has not been received;
- The project under which the dispute exists;
- The amount in dispute;
- An itemized description on which the amount is based; and
- If known, an explanation for any dispute concerning the payment not received.

Who should I contact at the agency?

Subcontractors who have not received payment of any undisputed amount should contact the agency's chief procurement officer. Contact information for the Cabinet agencies' chief procurement officers can be found at the end of this document.

I've sent my written notice of non-payment to the procurement officer. What happens now?

The procurement officer, or another agency representative, must contact the prime contractor to ascertain whether the amount withheld is an undisputed amount. If it is determined that part or the entire amount withheld is undisputed, the agency representative will instruct the prime contractor to pay the subcontractor the undisputed amount. The agency representative is to communicate to the subcontractor the results of the discussions with the prime contractor.

Guide to Prompt Payment for Non-Construction Subcontractors

August 2008

Page 2 of 2

Are there any penalties to the prime contractor for failure to pay subcontractors undisputed amounts?

Yes. The State agency that issued the contract may;

- Withhold further payments to the prime contractor until payment to the subcontractor is verified;
- Suspend all or some of the contract work;
- Pay or otherwise cause payment of the undisputed amount to the subcontractor;
- Place a payment for an undisputed amount in an interest-bearing escrow account; or
- Take other or further actions as appropriate to resolve the withheld payment.

What is an “undisputed amount”?

An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. This includes any retainage withheld, and any amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

What agencies are members of the Governor’s Cabinet?

The 22 member agencies of the Governor’s Cabinet and their chief procurement officers are:

Agency	Procurement Officer	Email
Aging	Ivey Gilliam	ilg@ooa.state.md.us
Agriculture	Joe Harrington	harrinjm@mda.state.md.us
Budget and Management	Joel Lieberknight	jleberkn@dbm.state.md.us
Business and Economic Development	Debi Chronister	dchronister@dbed.state.md.us
Disabilities	John Brennan	jbrennan@mdod.state.md.us
Education	Albert Annan	aannan@mdse.state.md.us
Environment	Mike Gallagher	mgallagher@mde.state.md.us
Executive Department	Jeremy Rosendale	jrosendale@gov.state.md.us
General Services	Michael Haifley	michael.haifley@dgs.state.md.us
Health and Mental Hygiene	Gary Goldberg	ggoldberg@dnhm.state.md.us
Housing and Community Development	Eleanor Kennedy	kennedy@mdhousing.org
Human Resources	Jane Bailey	jbailey@dhr.state.md.us
Information Technology	Sue Howells	Sue.Howells@doit.state.md.us
Juvenile Services	Marcus Filson	filsonm@djs.state.md.us
Labor, Licensing, and Regulation	Latesa Thomas	lthomas@dllr.state.md.us
Military	Nancy Fabula Hevey	hevey@mdmildep.org
Natural Resources	Diane Russell	drussell@dnr.state.md.us
Planning	Samer Atiya	satiya@mdp.state.md.us
Public Safety and Correctional Services	Behira J. Said-Pompey	BSaid-Pompey@dpscs.state.md.us
State Police	Jonathan Beam	jbeam@mdsp.org
Transportation	Carmina Perez-Fowler	Cperez-fowler@mdot.state.md.us
Veterans Affairs	John Kearns	jkearns@mdva.state.md.us

**Maryland
Department of
Transportation**

**GENERAL
CONDITIONS
FOR
MAINTENANCE
CONTRACTS**

MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS FOR MAINTENACE CONTRACTS

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MARYLAND DEPARTMENT OF TRANSPORTATION

GENERAL CONDITIONS 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 Administration:

- i. Maryland Port Administration
- ii. Mass Transit Administration
- iii. State Highway Administration
- iv. State Aviation Administration
- v. Motor Vehicle Administration
- vi. State Railroad Administration, and
- vii. Office of Assistant Secretary, Administration

- C. Organizational Definitions

Administration- the word “Administration” shall mean any one of the Administrations within the Maryland Department of Transportation, as listed in GP-1.02.

Administrator- The chief executive officer of an Administration.

Department- The word “Department” shall mean the Maryland Department of Transportation.

Engineer- Any person designated by the Administrator or the procurement officer, acting directly or through his duly authorized representative, such representative acting within the scope of the particular duties assigned to him or of the authority given him.

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

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

Secretary- The chief executive officer of Maryland Department of Transportation.

D. General Definitions

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

Bid- A statement of price, terms of sale, and description of the supplies, services, or construction offered by a vender to the State.

Bid Bond- See Proposal Guaranty

Bidder- A person formally submitting a bid for the work contemplated, acting directly or through a dully-authorized representative.

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

Calendar Day- Every day shown on the calendar, Saturdays, Sundays and holidays included.

Change Order- A written order signed by the responsible procurement officer, directing a Contractor to make changes which changes the clause of a contract authorized by the procurement officer t order with or without the consent of the Contractor.

COMAR- Code of Maryland Regulations.

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

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

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, Judi care, or similar reimbursement contracts for which eligibility and cost are by law or regulation.

Contract Documents- The written agreement executed between and Administration and the successful bidder, covering the performance of the work furnishing of labor, equipment and materials, by which the Contractor is bound to perform the work and furnish the labor, equipment and materials, and by which the administration is obligated to compensate him therefore at the mutually established and accepted rate or price. The Contract shall include the invitation for Bids, Notice to Contractors, Instructions to Bidders, Proposal, Contract Forms and Bonds, General Provisions, Specifications, Supplemental Specifications, all Special Provisions, all Technical Provisions, all Plans and Notices to Proceed, also any written Change Orders and Supplemental Agreements that are required to complete the construction of the work in the acceptable manner, including authorized extension thereof.

Contract Drawings- See definition of “Plans”

Contracts 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, or reinstatements.

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

Contract Time or Completion Date- The number of working or calendar days shown in the contract indicating the time allowed for the completion of the work completed in the contract. In case a calendar date of completion is shown in the contract, in lieu of the number of working or calendar days, such work shall be completed by that date.

Day- Calendar day unless otherwise designed.

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

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

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.

Performances Bond- Security as started in COMAR 21.06.07.01B, guaranteeing complete performance of the contract.

Person- Any individual, business, union, committee, club, or other organization.

Plans- The official drawings issued by the Administration as part of the contract documents, including those incorporated in the contract documents by reference.

Proposal- The response by an offer or to a solicitation of the Department to obtain goods or services. The response may include, but contract, and description of the technical expertise, work experience and other information as requested in the solicitation. As used herein the word “proposal” means “bid”.

Proposal Form- The approved form on which an Administration requires proposals to be set forth and submitted.

Proposal Guaranty- The security, in the form stated in COMAR 21.06.07.01B, designated in the Proposal, to be furnished by the offer or as a guaranty of good faith to enter into a contract with the State, if the contract is awarded to him.

Responsible Bidder of Offer or- 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.

Responsive Bidder- A person who has submitted a bid under procurement by competitive sealed bidding which conforms in all material respects to the requirements contained in the invitation for bids.

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.

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

Subcontractor- Any person undertaking the construction of a part of the work under the terms of the contract, by virtue of an agreement with the Constructor, who, prior to such undertaking, revives the (consent of the surety and the) approval of the Administration.

Superintendent- The executive representative of the Contractor authorized to receive and execute instructions from the Procurement Officer, and 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 new or improved procedures, construction items or materials developed subsequent to the publication of Standard Specification.

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

2. Preparation of Bid/Proposal

Bidder shall submit its bids/ proposal upon the forms furnished by the Administration, Carefully following bid preparation instructions provided. Completed Bid/Proposal Affidavit will be required of successful bidder before issuance of notice to proceed.

Offerors should give specific attention to the identification of those proportions of their proposals which they deem to be confidential, proprietary information or trade secrets and provide any 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 substance 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 form 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 interpretation 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 \$50,000, a proposal will 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 \$50,000 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, the Contractor's bid shall be rejected, its bid security shall be enforced. The contract will be awarded to the next lowest responsible and responsive bid.

C. Payment Bonds

A payment bond may be required for maintenance contract in excess of \$50,000 in the amount equal to at least 100 percent of the contract price. If required by the Special Provision 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 performance 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 bidder.

D. Acceptable Security

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

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 salesman, commercial agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this contract.
- B. For breach or violation of this warranty, the Administration shall have the right to terminate this agreement 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 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, or not current.

7. Contract Administration

This contract will be administrated on behalf of the Department Administration 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 questions as to the acceptable fulfillment 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 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, under this Contract; and
- D. It shall procure, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

11. Initiation of work

The Contractor shall not commence performance of the services until it receives from the Administration a formal written Notice to Proceed.

12. Notice to Proceed and Prosecution of Work

After the contract has been executed, the Administration will, within the time limit specified by the Administration elsewhere in the contract documents, issue to the Contractor a Notice to Proceed and this notice will stipulate the date on or before which the Contractor is expected to begin work. The specified contract time shall begin on the day that 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 risk of the Contractor.

The Contractor shall begin work promptly within the time specified by the procurement officer and shall notify the procurement officer at least 48 hours before starting work.

The Contractor shall submit, in writing, to the procurement officer within 10 days from the date of the notice to proceed, a progress schedule. This schedule shall be updated and reserved to reflect all changes affecting the jobs progress.

After work has started, it shall be prosecuted continuously on all acceptable working days without stoppage until the entire contract is complete.

Should the prosecution of 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 24 hours in advance of resuming operations. Said notification shall be confirmed in writing.

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, he 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.

Equal or Approved Equal:

B. (1) when any article is specified by propriety name, trade name, and/or name of manufacturer with or without the addition of such expression as "or equal" or " or approved equal, "it is to be understood

that the article named or the equal thereof is intended, subjected to the approval of the procurement officer as to the quality thereof; and it is distinctly understood: (a) that the procurement officer is to use his own judgment 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, no claim of any sort shall be made or allowed against the procurement officer, or the Administration, because of such decision.

(2) The offer of an article by the Contractor for any article specified will raise the presumption that it is for the purpose of saving money. If, in such a case, the article is approved, the Administration shall be given credit in the amount of difference between the net cost to the Contractor of the article submitted and the price at which he could have obtained the lowest price article specified. For convenience in checking the credit, if any, the Contractor shall submit these figures when the offer is made, and no article will considered without such figures.

(3) The word "article" wherever used in this 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 work shall subject at all times to inspection by the procurement officer, or other appropriate persons from the Administration, and the Contractor will be held strictly to the contract and allowable tolerances and in regard to quality of materials 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 inspection. The procurement officer, or other appropriate person from the Administration, 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 request it, the Contractor, at any time before the acceptance of work, shall remove or uncover such portions of finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the work to he standards required by the contract. Should the work thus exposed or examined prove acceptable, adjustments in the contract time and price will be made by change order for 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 expense.

When the United States Government or any railroad, corporation or other agency is to pay a portion of the coast of work covered by this contract, their respective representatives 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 will be considered unacceptable, unless otherwise determined acceptable under the provision in Section 13.

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 specification or shall be remedied otherwise in an acceptable manner authorized by the procurement officer.

Upon failures on the part of the Contractor to comply promptly with any order of the procurement officer made under the provisions to this section, the procurement officer shall have the authority to cause defective work to be remedied or removed and to deduct the costs from any monies due or to become due the Contractor under this contract.

16. Discrepancies in Contract Documents

In the event the Contractor discovers any discrepancies in the contract document, he 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.

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 his inspectors in every way possible.

The Contractor shall assign to the contract as his agent, a competent superintendent capable of communicating in English and 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 his authorized representatives. 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 superintendents shall be furnished irrespective of the amount of work sublet.

18. Cooperation with Utilities

It is understood and agreed that the Contractor has considered this bid all of permanent and temporary utility appurtenances their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained him due to any interference from the said utility appurtenances or the operation of moving them.

The Contractor shall have 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 responsibility of the Contractor.

In the event of interruption to utility service as a result of accidental breakage or 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 service 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 (1) arrangement and conduct of work (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 Administration shall have the right, 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 jurisdiction of another Administration. The Contractor shall cooperate fully with such other contractors and carefully fit his own work to such other work as may be directed by the procurement officer.

C. The Contractor agrees that in the event of dispute as to cooperation, the procurement officer will act as referee and decisions made by the procurement officer will be binding. The Contractor agrees to make no claims against the Administration for any inconvenience, delay or loss experienced by him because of the presence and operations of other contractors.

20. Administration Furnished Material

The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Administration. Materials furnished by the Administration will be delivered or made available to the Contractor at the point or points specified in the special provisions. The cost of handling and placing all materials, after they are delivered to the Contractor, shall be considered as included in the contract price for the item in connection with which they are used.

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

In cases where materials are supplied by the Administration and incorporated in the contract work by the Contractor, materials inspection and acceptance will not be a prerequisite for acceptance indicating that he carries insurance against the risks and in the amounts specified elsewhere in the contract.

21. Contractor's Insurance

Prior to the start of work on any contract, the contractor shall submit to the procurement officer Certificate(s) of Insurance indicating that he carries insurance against the risks and in the amounts specified elsewhere in the contract.

22. Responsibility for Damage Claims

A. The Contractor shall indemnify and save harmless 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 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 Workmen's Compensation Laws, or any other law, bylaw, ordinance, order of decree or any claims, suits, judgments, 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 his 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-executing said work or at any time due to defective work to 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 that are attributable to his negligence.

23. Assignment

The Contractor shall not assign the whole or any part of this contract, or any monies due or to become due under this contract without the prior, written consent of the Administration. In case 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 or payment therefore nor any provision in the contract documents nor partial or entire use of the work by the Administration shall constitute an acceptance of work not performed in accordance with the contract documents or relieve the Contractor of liability for any express warranties or responsibility for faulty materials or workman ship. The Contractor shall remedy any defects in the work, and pay for any damage to other work resulting from defects in his 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 Administration will 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, he shall certify to the Administration, in writing, the final acceptance of the entire project. The Administration, upon receipt and 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 Administrator, procurement officer or other authorized representative, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

27. Approval Authority

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

28. Remedies and Termination

A. Termination for Default

If the Contractor fails to fulfill its obligation 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.

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 in part, when ever 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 eared up to the date of termination.

29. Delays and Extensions 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 suppliers 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 promptly, 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, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those indicated in this contract, or (2) 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 this contract. The procurement officer shall promptly investigate the conditions, and if he finds that 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 this Contractor under this clause shall be allowed unless the Contractor has given the notice required in A. above provide, 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 changes in the work within the general scope of the contract, including but not limited to changes:
1. In the specifications (including drawing and designs);
 2. In the method or manner of performance of the work;
 3. In the State-furnished facilities, equipment, materials, services, or site;
or
 4. Directing 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 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 under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to subparagraph F. thereof, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the contract, whether or not changed by any order, an equitable adjustment shall be made in 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 require; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased 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, he shall, within thirty (30) days after receipt of a written change order under A. above or the furnishing of written statement setting forth the general nature and monetary extent of such 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 claims an equitable adjustment. The Contractor shall be allowed to add the following maximum percentages for overhead and profit to his costs for labor, materials and equipment:

- A. 20% may be added by the Contractor for overhead and profit for work performed by his own forces.
- B. 15% may be added by the subcontractor for overhead and profit for work performed by the subcontractor; the Contractor may add an additional 5% of the subcontractor's costs for labor, materials and equipment.
- C. The provisions of Paragraphs A. and B. above 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 he may determine to be appropriate for the convenience of the Administration.
- B. If the performance of all or any part of the work is, for an unreasonable period time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract or by his 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. However, 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 of 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 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 started, 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 of changes to the contract for which there are no applicable unit prices in the contract, the Administration 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 Administration 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 on the work, including transportation charges paid by him (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 that 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 \$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 extended 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 Section 34 by his forces and by his 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 COMAR21.09.01, shall be treated as a dispute pursuant to Section 52 and the Contractor shall proceed diligently with the performance of the force account equal to time 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, workmen 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 workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work.

In addition, the Contractor's fixed fee may 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 this 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 as ordered on a force account basis.

- I. No payment will 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, rental rate, and extension for such 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 1. shall be accomplished by copies of certified payrolls. Under 2., original receipts for rentals must be provided if requested by the procurement officer. 3. and 4. shall be accompanied by original receipts invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are 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 the stock, that the quality claimed was actually used and that the price and transportation of the material as claimed represent actual cost. Any request for payment under this Section should be submitted in the order outlined above.

35. Variations in Estimating Quantities

Where the quantity of a payment item in this contract is an estimated quantity and where the actual quantity of such payment 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 due 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 may grant an extension of time within ten (10) days from the beginning of the delay, or within a further period of time as the Procurement Officer may deem necessary and appropriate to allow for the completion of work. All time extension requests shall be submitted to the Procurement Officer by the Contractor prior to commencement of any delay and the request shall be accompanied by a written thorough justification for the request.

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.

Section 16-202 of State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated into this contract by reference.

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

COMAR 21.08.01 et seq., "Disqualifications, Suspension, Debarment, Reinstatement and Sanctions", is incorporated into this contract by reference.

37. Non-Hiring of Employees

No employee of the State of Maryland of 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 herby 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 his official capacity through decision, approval, disapproval, recommendation, advice or investigation in any contract or other matter in which he, his spouse, parent, minor child, brother or sister, has a financial interest or to which he has a corporation, association or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner or employee is a party, or to which any person or organization with whom he 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 the Annotated Code of Maryland.

39. Registration

Pursuant to subsection 7-021 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 inter-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 Administrator 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 form the Comptroller evidencing such payment.

41. Tax Exemption

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Were a contractor is required to furnish and install material in the

construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales tax and the 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 bid 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 bid replaced. 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 for the replacement plus applicable expenses, if any.

44. Patent, Trade Mark and Copyright Infringements

Contractor agrees to indemnify, protect and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgment for patent, trademark and copyright infringements, arising out of purchase or use of materials, supplies, equipment or services covered by this contract.

45. Occupational Safety and Health Act (OSHA)

All materials, supplies, equipment of 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 9,1976 (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 the Provisions of COMAR 11.01.10, which incorporates by reference the current revision of the minority business enterprise program. Copies of the Minority Business Enterprise Program may be obtained from the Department of Transportation Fair Practices Officer, P.O. Box 8755, BWI Airport, Maryland 21240. This contract is also subject to all applicable federal and State laws and regulations pertaining to Minority Business Enterprise and Affirmative Action.
- B. To the extent, any of the above or regulations are applicable to this contract and are specifically incorporated herein.

47. Small Business Procurement

If the solicitation for bid indicates that this procurement has been designated for a small business preference, the provisions of COMAR 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 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 the contained in subsection (a) above, and in any subcontractor expert a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors 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 Executive 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 Agreement, 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 Agreement until the Contractor complies, and/or
- (2) Cancellation, termination or suspension of the Agreement in whole or in part.

49. Multi-Year Contract Contingent Upon Appropriation

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 right 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 this Contract for each succeeding fiscal period beyond the first.

50. “Buy American 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 contract in accordance with the procurement officer’s decision.

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.

54. Contractor’s Invoices

Contractor agrees to include on the face of all invoices billed to the State, his Federal Tax Identification or Social Security Number.

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

57. Incorporation by reference

All terms and conditions under the solicitation, and any amendments thereto, are made part of this contract.

58. Maryland Law Prevails

The parties hereby agree that:

- A. This 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. Contracts are subject to the applicable provisions of COMAR Title **25.01.01.04**, which stipulates that when awarding a contract by competitive bidding, the State may give a preference to the lowest responsive and responsible bid from a Maryland firm over that of a non-resident firm if the State in which the non-resident firm is located gives a resident business preference.
- B. The preference given under this Section shall be identical to the preference, through law, policy or practice, 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 or services provided; the date the goods were received or the inclusive dates the services were rendered; the contract price(s) retention, if any; the basis for the billing; the contract or purchase order number; the Contractor's federal Tax Identification Number of Social Security Number; the name of the address of the proper invoice recipient.
- C. In order to receive payment of the interest, the Contractor must submit a proper invoice for accrued interest within 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 year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if claim has been filed under State Finance and Procurement Article, Title 15, Subtitle 2 of the Code.
- D. For the purpose of this contract, an amount will not be deemed due and payable if:
 - (1) The amount invoiced is inconsistent with the contract
 - (2) The proper invoice has not been received by the party or office specified in the contract.
 - (3) The invoice of performance under the contract is in dispute or the contractor has failed to otherwise comply with the provision 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 quantity requirements of the contract.
 - (7) If the contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the agreement.
 - (8) If the contract provides for the retain age and the invoice is for release of the retain age, all stipulated conditions for release of the retain age have not been met.
 - (9) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the procurement officer or 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 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 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 designee, at all reasonable times.

63. General Conditions Controlling

In the 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 without the prior written approval of the Administration.

MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS FOR MAINTENANCE CONTRACTS 1989
ADDENDUM NO.1

Add to Section 28, Remedies and Termination, A., Termination for default, the following language:

“Termination hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of COMAR 21.07.01.11B.”

Add to Section 28., Remedies and Termination, B., Termination for Convenience of the State, the following language:

“ Termination hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of COMAR 21.07.01.11B.”

Add to Section 52., Disputes, the following Paragraph:

“ 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 40 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.”

MARYLAND DEPARTMENT OF TRANSPORTATION GENERAL CONDITIONS FOR
MAINTENANCE CONTRACTS 1989

ADDENDUM NO. 2

Replace Section 5, Contingent Fee Prohibition, Page 6, with the following language:

- (a) “The contractor, architect, or engineer warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this agreement.”
- (b) “ Contingent fees prohibited; exceptions; lobbyists.-(1)
 - (i) Except as provided in subparagraph (ii) of this paragraph, unless a person is bona fide employee, bona fide salesperson, or commercial selling agency working for the contractor, the person may not offer or agree to solicit or secure a procurement contract under this subtitle if the person’s fee is contingent on, or results from, the making of the procurement contract.”
 - (ii) “ A Lobbyist, as defined in Article 40A, Section 1-201 of the Code, may not offer or agree to solicit or secure a procurement contract under this subtitle if the lobbyist’s fee is contingent on, or results from, the making of the procurement contract.”

Maryland Transportation Authority

OFFICIAL DOCUMENT

SIGNATURE GUIDELINES

TYPE OF LEGAL ENTITY	WHO MUST SIGN	TYPE OF PROOF REQUIRED
Corporation or Professional Service Corporation (“Co.”, “Corp.”, “Inc.”, “Ltd.”, “Chartered”, “Chtd.”, “P.A.”, “Professional Association”, “P.C.”, “Professional Corporation”)	NO PROOF NEEDED IF SIGNED BY: The Chairman or vice chairman of the board of directors, the chief executive officer, chief operating officer, president, or any vice president AND is Witnessed or Attested by the secretary.	IF SIGNED BY SOMEONE ELSE, ENTITY MUST PROVIDE: Corporate By-Laws, Articles of Incorporation, or a Corporate Resolution evidencing the authority of the person signing for the entity.
Partnerships	NO PROOF NEEDED IF SIGNED BY: Any Partner signing in his/her capacity as an agent of the Partnership.	IF SIGNED BY SOMEONE ELSE, ENTITY MUST PROVIDE: Statement of Partnership Authority
Limited Partnerships (“L.P.”)	NO PROOF NEEDED IF SIGNED BY: Any General Partner signing in his/her capacity as an agent of the Limited Partnership.	IF SIGNED BY SOMEONE ELSE, ENTITY MUST PROVIDE: Certificate of Limited Partnership
Limited Liability Company (“L.L.C.” or “L.C.”)	PROOF ALWAYS NEEDED	ENTITY MUST PROVIDE: Operating Agreement of the LLC
Religious Corporations and Churches	PROOF ALWAYS NEEDED	ENTITY MUST PROVIDE: Articles of Incorporation, By-Laws or Corporate Resolution
Limited Liability Partnership and Limited Liability Limited Partnerships (“L.L.P.” or “L.L.L.P.”)	PROOF ALWAYS NEEDED	ENTITY MUST PROVIDE: Certificate of Limited Liability Partnership and Partnership Agreement or Statement of Partnership Authority

Note: this chart does not cover unincorporated associations.