

5/3/24

**PROJECT TITLE:** Green Roof Maintenance**PROJECT NO.:** TU-2430**DESCRIPTION:** Towson University (TU) seeks a qualified vendor to provide all necessary labor, supervision, tools, equipment, and material to maintain multiple planted green roofs as a preventative program to support TU stormwater permits, which includes maintenance of the following:

1. Plants,
2. Material bedding,
3. Associated constructed hardware as it relates to the green roof design e.g.- flashing, edging, drains, covers, etc.

**SCHEDULE:** The period of the contract shall consist of one (1) base year from date of award with the University reserving the right to exercise at its sole option four (4) one-year renewal options. The total duration of the contract shall not exceed five (5) years. If exercised, prices for the option years shall be adjusted by the percentage change of the Consumer Price Index for All Urban Consumers (CPI-U) US City average, all items, as published by the Federal Government for the latest available twelve-month period at time of renewal. No annual adjustment shall exceed 3%.**PRE-BID/PROPOSAL CONFERENCE:** May 9, 2024 @ 10:00 AM, Room 426 Administration Building, 7720 York Rd. A site visit will immediately follow the pre-bid meeting. If you wish to request an ADA accommodation, please telephone (410) 704-2171.**DEADLINE FOR QUESTIONS:** May 17, 2024 @ 4:30 PM**BID DUE NO LATER THAN:** May 28, 2024 @ 2:00 PM. Late bids, late requests for modification, or requests for withdrawal will not be considered**DIRECT QUESTIONS TO:** Wendy Childs, Procurement Officer Representative, via email: wchilds@towson.edu or by Phone: (410) 704-3486.**PROCUREMENT METHOD:** This solicitation will be conducted in accordance with the University System of Maryland's (USM) Procurement Policies and Procedures, Competitive Simplified Procurement.**BASIS FOR AWARD:** Award will be made to the responsible bidder who submits the responsive bid determined to be most advantageous to the University.**PARKING:** All vehicles parked on Towson University property must strictly observe University parking regulations. Each vehicle parked on campus between 6 am and 8 pm, Monday through Thursday, and from 6 am to 3 pm on Fridays, must obtain a valid University permit unless parked at a paid meter. Parking on sidewalks or unpaved areas is prohibited at all times. All fines for parking or other vehicle violations are the responsibility of the Contractor. This applies to vendors, salespersons, company vehicles, and Contractor employees' personal vehicles. Long- and short-term permits are available, at designated rates, for vendors with contracts that require them to park regularly on the campus; see the parking website at <https://www.towson.edu/parking/visitors/> for permit rates and information to support preparation of Bid/Price Proposal. Parking Transportation phone: (410) 704-7275. **NOTE: Include parking fees in Bid/Price Proposal.****SMOKING:** Smoking, defined as the burning of tobacco or any other material in any type of smoking equipment, including but not restricted to cigarettes, cigars or pipes, is prohibited on all property owned, leased or operated by the University. This consists of all buildings, including residence halls, leased restaurants and lodging facilities; all grounds, including exterior open spaces, parking lots and garages, on-campus sidewalks, streets,

driveways, stadiums, recreational spaces and practice facilities; and in all University-owned or leased vehicles. The policy applies to all individuals on the University campus, including faculty, staff, students, parents, vendors and visitors. Contractor and its employees and subcontractors who violate the policy may be denied access to the University campus.

**INSURANCE:** The Bidder shall secure, pay the premiums for, and keep in force until the expirations of the contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Bidder under the contract. Upon award, the successful Bidder shall furnish certificates of insurance.

1. Commercial General Liability Insurance including all extensions; \$2,000,000 each occurrence; \$2,000,000 personal injury; \$2,000,000 products/completed operations; and \$2,000,000 general aggregate.
2. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
3. If automotive equipment is used in the operation, automobile liability insurance of \$1,000,000 combined single limit, each accident.
4. If food products are used in the operation, food products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

Each policy for liability protection, bodily injury or property damage must specifically name, on its face, Towson University, as an additional named insured as respects operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items 1-5. above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

Each insurance policy shall contain the following endorsements: "It is understood and agreed that the Insurance Company shall notify in writing procurement officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the procurement officer. With the exception of Workmen's Compensation, upon the request of the procurement officer, a certified true copy of each policy of insurance, including the above endorsement, manually countersigned by an authorized representative of the insurance company, shall be furnished to the procurement officer. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of contract award, the requested certificates and policies shall be delivered as directed by the procurement officer. Notices of policy changes shall be furnished to the procurement officer.

All required insurance coverages must be acquired from insurers authorized to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of *Best's Insurance Reports*.

**RESERVATIONS:** The University reserves the right to reject any or all bids, award the contract in whole or in part, or to make no award, as its best interests may require.

**MINORITY BUSINESS ENTERPRISE UTILIZATION:** An MBE participation goal of **15 percent** of the total project dollar amount has been established for this project.

Offerors are encouraged to maximize the possible subcontracts to MBEs, and consider the \_ percent goal a minimum, not a maximum for this goal. By submitting a response to this solicitation, the Bidder or Offerer agrees that the dollar amount of the project as included in the solicitation will be performed by certified minority business enterprises as specified.

**LIQUIDATED DAMAGES PROVISION RELATED TO MBE GOAL:** This contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The University and the Contractor acknowledge and agree that the University will incur damages, including but not limited to, loss of goodwill, detrimental impact on economic development and diversion of internal staff resources if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the University might reasonably anticipate to accrue as a result of such lack of compliance are difficult to ascertain with precision.

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

1. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$24.93 per day until the monthly report is submitted as required.
2. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ 87.24 per MBE subcontractor.
3. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
4. Failure to meet the Contractor’s total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
5. Notwithstanding the use of liquidated damages, the University reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

**INCLUDED IN BID PACKAGE:**

- ❖ Scope of Work
- ❖ Attachment A – Green Roof Drawings
- ❖ Attachment B – Towson University Green Roof Maintenance Monthly Service Report
- ❖ Attachment C – Vendor Green Sales Report
- ❖ Attachment D - Maryland Green Purchasing Committee Approved Specification – Landscaping Services
- ❖ Exhibit A-1 – Environmental Health and Safety Requirements
- ❖ Exhibit A-2 – Required Contract Provisions for Construction and Maintenance (Simplified)
- ❖ Exhibit B – Bid/Proposal Affidavit
- ❖ Exhibit C – Contract Affidavit
- ❖ Exhibit D – Minority Business Enterprise (MBE) Participation
- ❖ Exhibit E – Sample Agreement
- ❖ Exhibit F – Company Profile
- ❖ Exhibit G – Firm Experience
- ❖ Exhibit K – Addenda Acknowledgement
- ❖ Exhibit L – Key Personnel Form
- ❖ Exhibit P – Pre-Proposal RSVP Form
- ❖ Exhibit R – Conflict of Interest Affidavit and Disclosure
- ❖ Exhibit S - Bid/Price Proposal Form
- ❖ Exhibit T – Contractor’s Company Stock Affidavit

**BID SUBMITTALS:** The following items shall be submitted with bid:

Failure to submit any item may result in bid being rejected.

- ❖ Attachment 1A from Exhibit D – MBE Participation
- ❖ Exhibit B – Bid/Proposal Affidavit
- ❖ Exhibit F – Company Profile
- ❖ Exhibit G – Firm Experience
- ❖ Exhibit K – Addenda Acknowledgement
- ❖ Exhibit L – Key Personnel Form
- ❖ Exhibit R – Conflict of Interest Affidavit and Disclosure
- ❖ Exhibit S - Bid/Price Proposal Form
- ❖ Maryland Pesticide Control Applicator Certification(s)
- ❖ Maryland Pesticide Business License

Prices quoted are valid for 90 days unless otherwise noted.

### **SUBMIT BIDS VIA E-MAIL**

- ❖ **Electronic Submittal** – submit via e-mail as an **attachment** by the bid due date and time. The e-mail address in which to submit the bid is [bids@towson.edu](mailto:bids@towson.edu). This e-mail address is for the receipt and storage of authorized Bids **ONLY**. It is not monitored for any other type of correspondence. All other correspondence should be directed to the appropriate procurement representative per the instructions contained in this document. The **project name and number must appear in subject line of email** along with your **company name**. Any email attachment, or cumulative email attachments, at or exceeding 150MB in size will not be accepted by the University email system. Bidders are permitted to separate email attachments into multiple, clearly labeled, emails.

## **GREEN ROOF MAINTENANCE**

**TU-2430**

### **SCOPE OF WORK**

#### **I. SUMMARY**

- A. Towson University (TU) seeks a qualified vendor to provide all necessary labor, supervision, tools, equipment, and material to maintain multiple planted green roofs as a preventative program to support TU stormwater permits, which includes maintenance of the following:
1. Plants,
  2. Material bedding,
  3. Associated constructed hardware as it relates to the green roof design e.g.- flashing, edging, drains, covers, etc.
- B. Refer **"Attachment D -Maryland Green Purchasing Committee Approved Specification – Landscaping Services,"** for additional specifications.

#### **II. ADMINISTRATION**

- A. **Definitions** - The following words and phrases, here appearing capitalized and in quotes, do for the purposes of this solicitation and resultant contract have the following meanings:
1. "CHANGE ORDER" - A written order signed by the responsible procurement officer, directing a Contractor to make changes in implementation of the project.
  2. "CONTRACTOR" - The person or organization having direct contractual relation with the University for the execution of the "Work." If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable.
  3. "DRAWINGS" - The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules, and diagrams.
  5. "EXTENSIVE GREEN ROOFS" – Extensive green roofs are generally made up of a very thin layer of soil, not more than 5 inches or other planting medium with shallow-root plants like sedum, mosses, and grasses.
  6. "INTENSIVE GREEN ROOFS" – Intensive green roofs require the deepest soil from 6 up to 48 inches thick and have the greatest impact on the structural design to accommodate all types of plantings including perennials, shrubs and trees.
  7. "SUBCONTRACTOR" - As used under the Contract Documents includes only those having a direct contract with the Contractor. This term includes one who furnishes material worked to a special design according to the plans and specifications for the "Work." The term excludes one who merely furnishes material not so worked.
  8. "TASK ORDER" - A written document from the TU PM or assigned designee or the TU procurement office, which directs the Contractor to perform services issued under the umbrella of this master contract.

9. "TOWSON UNIVERSITY'S PROJECT MANAGER (TUPM) or ASSIGNED DESIGNEE" – The University's representative, generally, but not always, from the Office of Facilities Management. This person will be responsible for the University for the overall management, administration, communication and completion of the Task Order.
  10. "TU or UNIVERSITY" - Refers to Towson University, a body corporate and an agency and instrumentality of the State of Maryland.
  12. "WORK" - Work shall be understood to mean the furnishing of all labor, materials, equipment, services, utilities, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.
- B. TU reserves the right to add or remove green roofs from this contract. Any addition or removal of green roofs shall require an amendment to the contract. Current TU green roofs are listed below. Refer to "**Attachment A – Green Roof Drawings,**" for details.

Current TU Green Roofs are as follows:

Number	Location	Green Roof Type	Vegetative Square Foot	Soil Depth	Age
1	College of Liberal Arts	Extensive	35,678	4 inches	A-2008, B+C-2011
2	Health & Counseling Center at Ward & West Hall	Extensive	1698	4 inches	2013
3	West Village Commons	Intensive	2100	6 inches	2011

**C. Contract Period**

1. The period of the contract shall consist of one (1) base year from date of award with the University reserving the right to exercise at its sole option four (4) one-year renewal options. The total duration of the contract shall not exceed five (5) years. If exercised, prices for the option years shall be adjusted by the percentage change of the Consumer Price Index for All Urban Consumers (CPI-U) US City average, all items, as published by the Federal Government for the latest available twelve-month period at time of renewal. No annual adjustment shall exceed 3%.
2. Any work assigned before, but completed after, the effective termination date of the Contract is to be honored with all terms, conditions, specifications and costs of the Contract until the work is completed and accepted by the TU Project Manager (TUPM) or assigned designee.

**D. Pricing**

1. Flat Rates
  - a. The Contractor shall propose fully loaded flat rates for Monthly Maintenance tasks as defined in section V.B., for each of the three (3) green roofs. Fully loaded flat rates shall include all costs including labor, owned equipment, insurance, training, overhead and profit and

any other services necessary for and incidental to the execution and completion of the work.

2. Hourly Rates

- a. The University is also requesting that the Contractor propose fully loaded hourly rates for Supervisor, Lead Technician, Certified Maryland Pesticide Applicator, and Laborer positions, to be used for Additional Services outside of monthly maintenance. Hourly rates shall be fully loaded, inclusive of all costs including labor, owned equipment, insurance, training, overhead and profit and any other services necessary for and incidental to the execution and completion of the work.

3. All hours are estimates not to be construed with actual contract usage. There is no guaranteed minimum or maximum usage on the resulting contract.

4. Material Charges

- a. Plants are considered material.
- b. The following applies to materials consumed in Additional Services:
  - (1) Material costs shall be reimbursed to the Contractor with a mark-up not to exceed the mark-up percentage submitted by the Bidder on the TU-2430 Bid/Price Proposal Form. The mark-up for material, combined overhead and profit, shall be based on the cost of materials to the Contractor from his usual sources of supply with all usual trade practice discounts deducted. All cost discounts shall be deducted in determining material costs. The material mark-up shall remain constant for all contract years.
  - (2) The Contractor shall make every effort to obtain materials at the least cost possible. TU is tax exempt, however, pursuant to "Exhibit A-2, Required Contract Provisions Construction & Maintenance", section 47, "Where a Contractor is required to furnish and install material in the construction of improvement to real property in performance of the Contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply." TU will reimburse the contractor for sales tax that was charged for materials that were purchased by the contractor for use in TU projects. The University shall **not** pay a mark-up on tax.
  - (3) Materials shall include only materials incorporated in or consumed by the work of the project needs.
  - (4) Material taken from the Contractor's stock:
    - i. Contractor's/Company Stock is defined as bulk purchases made by the Contractor for its own stock to be used to provide material for numerous unspecified projects/customers. Items purchased specifically for university work are NOT considered company stock.
    - ii. Material taken from the Contractor's stock shall be billed at the current market replacement costs as delivered to the Contractor, plus the Contractors mark-up for materials.

- iii. Note that a special fee or merchandising fee for material taken from stock is not allowed under this Contract.
  - iv. Receipts, or invoices for materials are required as back-up documentation with invoices.
  - v. If receipts, or invoices are not available, the Contractor shall provide an "Exhibit T – Contractor's Company Stock Affidavit," listing material description, quantity, unit cost, extended cost, mark-up and total cost, which shall certify that such materials were taken from their stock, that the quantity claimed was actually used, and that the price, transportation and handling of the materials as are claimed represent actual cost shall be submitted by the Contractor as proof of replacement cost.
- (5) University's right to furnish material:
- i. The University reserves the right to purchase material or job required merchandise, or to furnish such items from stock.
- (6) Contractor shall provide an itemized list for material valued below \$100.00 individually or in aggregate. Contractor shall provide copies of receipts and/or invoices for materials indicating Contractor discount for material valued at or over \$100.00 individually or in aggregate.

5. Equipment

- a. Usage of Contractor owned equipment shall be included in the man hour rates and Flat Rates as stated above in section D1.a. and D.2.a.
- b. Rental charges for equipment are reimbursable. Contractor shall provide a receipt for the rental with their invoice. The mark-up for equipment rental, combined overhead, and profit, shall not exceed 10% of the equipment rental costs.
- c. Invoice price includes any sales tax and supplier freight/handling/delivery charges. (Equipment Rental Mark-Up is to cover Contractor's overhead and profit only. The Contractor may not add any charge for handling rental equipment. Time & labor of the Contractor's employees assigned to university work related to ordering, picking up, or handling rental equipment are included in the Contractor's labor charges for the job.)

**E. Hours of Operation**

- 1. All work shall be performed between the hours of 7:00 am and 3:30pm, Monday through Friday.
- 2. Occasionally the University may require Additional Services outside of these hours. In this instance the Contractor shall bill the University at the hourly rates submitted on their bid form plus materials, rentals and applicable mark-ups.



3. Overtime, emergency, differential, and holiday pay are not allowable on this contract. The only allowable hourly rates are those bid on TU-2430 Exhibit S - Bid/Price Proposal form.

### III. CONTRACTOR QUALIFICATIONS

A. The following shall be submitted as part of the Bid Package:

1. **Exhibit F, Company Profile** – The Contractor must have at least three (3) years of experience performing Green Roof Maintenance.
2. **Exhibit G, Firm Experience** – Furnish references for no less than three (3) projects of comparable size and scope completed within the past three (3) years, or currently underway. Please include any references for similar work with educational institutions.
3. **Exhibit L, Key Personnel** – Furnish a Key Personnel form for the following:
  - a. **Supervisor** - One (1) Supervisor proposed to work under this contract with a minimum of one (1) year combined horticultural education and experience horticulture in projects of comparable size and scope.
  - b. **Maryland Pesticide Control Applicator Certification(s)** – Contractors shall have at least one Maryland Certified Pesticide Control Applicator with a minimum Category 3A on staff at time of award. The Contractor shall submit a copy of the Maryland Pesticide Control Applicator Certification for each Pesticide Applicator proposed to complete work under this contract.
4. **Maryland Pesticide Business License** – Each contractor must submit a copy of their Maryland Pesticide Business License with their company profile.

### IV. CONTRACTOR REQUIREMENTS

A. **Contractor Personnel**

1. A full-time, uniformed Supervisor must be present on campus while work is in progress and be available via cell phone in case of emergency.
2. The Contractor must notify the TU PM or assigned designee when the Contractor's supervisor will be on vacation or other leave of absence and who will serve as a substitute.
3. The Supervisor must attend meetings and site inspections of the grounds as requested by the University.
4. Contractor personnel shall be trained and qualified using current horticultural and roof safety best practices to perform all planted bed maintenance and associated green roofs structures.

B. **Employee Safety**

1. The Contractor shall abide by all current safety regulations and building codes. The Contractor shall be responsible for the safety of their employees in compliance with all Federal and State regulations.
2. Safety and Environmental Requirements: The Contractor must ensure that all work is performed in strict compliance with all applicable and current local, Maryland Occupational Safety and Health (MOSH) (state) and Occupational

Health and Safety (OSHA) (federal), safety standards and regulations. MOSH incorporates federal standards by reference; therefore, its state and federal standards are identical.

**C. Equipment Usage and Maintenance**

1. The Contractor must clean all equipment before moving to new sites to ensure that invasive species are not transported to new areas.

**D. Spills**

1. All spills shall be immediately reported to the TU PM or assigned designee. The Contractor shall be responsible for cleanup of all spills in compliance with all Federal and State regulations.

**E. Required Reporting**

1. Monthly Service Reports

- a. The Contractor shall provide a detailed written service report after each service monthly visit. The service report must contain information for each green roof serviced during the monthly service period and should be emailed on a separate sheet to the TU PM or assigned designee at the time of invoice for the monthly service. See "**Attachment B: Towson University Green Roof Maintenance Monthly Service Form,**" as an example of required information. Each monthly report must include the following:

- (1) Date and start time of service visit of each green roof.
- (2) Representative photos of each planted section of each green roof. Close-up photos of any problem spots.
- (3) List of tasks that were completed.
- (4) Photos of damage to roof, roof drains, flashing etc.
- (5) Recommendations - plant replacements, soil testing etc.

**NOTE:** The "Towson University Green Roof Maintenance Monthly Service Form" shall be sent in an email to the TU PM or assigned designee. Invoices shall be emailed separately to [StratUsAPinvoices@towson.edu](mailto:StratUsAPinvoices@towson.edu) (see section V.G.1 for invoicing instructions.) Any attachments other than the invoice sent to [StratUsAPinvoices@towson.edu](mailto:StratUsAPinvoices@towson.edu) will not be accepted.

2. Roof Condition Assessment

- a. Twice a year, Pre-Season Clean-Up – March, and Post Season Clean-Up – November, the contractor shall perform and document a thorough Roof Condition Assessment to include general roof conditions, drain cleaning, and inspection of roof flashing for loose fittings, edging, covers and/or any other necessary repairs.

- F. Contractor shall adhere to all requirements detailed in "**Attachment D -Maryland Green Purchasing Committee Approved Specification – Landscaping Services.**"

**V. EXECUTION**

**A. Summary**

1. The successful Contractor shall provide green roof maintenance for multiple University green roofs. Green Roof Maintenance Services are divided into two categories, Monthly Maintenance Service and Additional Services.

**B. Monthly Maintenance Service**

1. The Contractor shall provide green roof maintenance for multiple contracted green roofs from March through November, to be conducted once a month. Maintenance during December through February is not required, unless requested by the TU PM or assigned designee. Plant installations and any maintenance requested by the University during December through February shall be considered additional services.
2. Each monthly service shall be coordinated with the TU PM or assigned designee and occur within a period of three (3) to five (5) consecutive days each month. Scheduled maintenance visits shall be no closer than three (3) weeks or longer than five (5) weeks apart.
3. Monthly Maintenance service to be performed during each visit:
  - a. Inspect general roof conditions including clearing drains.
  - b. Hand weeding
  - c. Trim perennials and dead head appropriately according to type. Divide every two (2) to three (3) years, as necessary.
  - d. Trim succulents to encourage additional leaf development at the plant crown and to spread.
  - e. Collect and dispose debris, leaves and trash off site and report the debris weight removed on the Monthly Maintenance Report.
  - f. Create monthly service report.
4. Monthly Maintenance Service Billing
  - a. Monthly Maintenance Services shall be billed to the University using the per roof monthly maintenance flat rate as submitted on their bid form for this solicitation.

**C. Additional Services**

1. Additional Services shall include but not be limited to the following:
  - a. Pre -Season Clean-up – March
  - b. Post-Season Clean-up – November
  - c. Plant Health Care Services
  - d. Plant Installation
  - e. Mulching
  - f. Occasionally the university may request green roof related services beyond the services as described within this solicitation. These services shall be deemed additional Services.
  - g. Any services requested during December through February.
2. Pre and Post Season Clean-up Services
  - a. In addition to the general monthly maintenance service tasks performed each month, the contractor shall perform the following:
    - (1) Perform roof condition assessment.

- (2) Replace soil, mulch as needed.
  - (3) Remove undesirable seed heads and stalks, weeds, leaves and debris and other seasonal task as needed.
3. Plant Health Care-Services
  - a. Contractor shall monitor growing conditions for common problems in appearance, structure, and vitality. Contractor shall be trained to recognize signs and symptoms of stress(es), evaluate for potential damage, and recommend appropriate action(s) for the following:
    - (1) Insects and disease
    - (2) Soil or root system problems
    - (3) Irrigation, fertilization, pruning
  - b. Contractor shall provide the following remedies as necessary:
    - (1) Apply pre-emergent.
    - (2) Provide curative fungicide applications as necessary to stop progress of plant fungal diseases.
    - (3) Soil nutrient level testing results shall be provided if plant performance deems necessary.
    - (4) Fertilizing with organic slow-release fertilizer.
    - (5) Grub control.,
    - (6) Fungicide drenching,
  - c. All pesticide work shall be carried out by Maryland Certified Pesticide Control Applicators.
  - d. The Contractor shall provide all chemical and fertilizer applications in accordance with current State and Federal laws.
  - e. The Contractor shall post, application signs at the completion of treatments at each roof entrance according to State and Federal Law.
  - f. The Contractor shall provide label and copy of pesticide application record for the amount of fertilizer and/or pesticide use for each application. The record shall include each site location, amount used for each site and be submitted with each invoice.
  - g. The Contractor shall, calibrate, clean and maintain equipment prior to on-site arrival
  - h. If utilizing Campus outdoor water sources the Contractor shall utilize metered water for applications from designated sources and report amount of water utilized on the invoice. The Contractor must provide the water meter.
  - i. Mix applications per current product label instructions. Contractors shall dispose of incorrectly mixed load off campus.
  - j. The Contractor shall be responsible for chemical damage to surrounding vegetation during treatments.
  - k. All spills shall be immediately reported to the Landscape Services Manager. The Contractor is responsible for cleanup of all spills.
4. Additional Services Quote
  - a. Quotes for Additional Services shall include hourly rates for Supervisor, Certified Maryland Pesticide Control Applicator, and Laborer positions, as well as itemized material, and any itemized rental equipment list(s) plus applicable mark-up.
  - b. Any additional services (labor, material, rental equipment) must be approved by the TU PM or assigned designee prior to starting work. The Contractor is responsible for any charges associated with any additional

services performed without written prior approval from the TU PM or assigned designee.

#### **D. Implementation**

1. The Contractor shall contact the TU PM or assigned designee, at the beginning of each service month to coordinate and schedule monthly services for each building.
2. The Contractor is responsible for collecting necessary access keys from Work Control office located at the General Services Building.
3. The Contractor shall perform the Monthly Maintenance Services as described in section V. B. according to the agreed schedule.
4. Upon completion, the Contractor shall provide an invoice and the Monthly Service Report including a quote for any additional services recommended as a result of the Monthly Service Report. Additional Services shall be quoted using the Additional Services hourly rates submitted with their bid plus any material, and rental equipment plus applicable mark-up. Quotes shall be not to exceed time and materials, unless otherwise instructed by the TU PM or assigned designee.
5. The TU PM or assigned designee, shall review the invoice, Monthly Service Report, and quote for additional services.
6. If additional services are approved, the TU PM or assigned designee, shall coordinate to schedule the additional services. All approvals shall be in writing.
7. Upon completion and acceptance of the additional services by the TU PM or assigned designee, or other authorized designated personnel, the Contractor shall submit an invoice. Invoices shall include all required back-up documentation, including daily labor tickets, receipts for materials and any rental equipment plus the applicable mark-up.

#### **VI. GENERAL INFORMATION**

- A. TU reserves the right to instruct the Contractor to remove an employee from campus without cause.
- B. Subcontracting on this contract is prohibited unless prior written approval is obtained from the TU PM or assigned designee.
- C. The University will not accept nor authorize payment for travel time or expenses of services personnel. The only billable time will be for service work performed.
- D. The terms and conditions of this solicitation and any contracts or purchase orders issued as a result of this document shall supersede and prevail over the terms and conditions contained on preprinted Contractor's documents such as invoices, etc.
- E. The awarded Contractor shall report any issues, structural or otherwise, that affect the function of the green roof to the TU PM or assigned designee. The University shall investigate the issue and determine whether a repair is required. If a repair is required, the University shall determine the manner of execution.
- F. Quotes

1. Quotes are not required for the Monthly Maintenance Services. The University shall be invoiced at the rates submitted with the awarded Contractor's bid. Quotes are required for Additional Services.
2. All quotes shall be submitted via email to the TU PM or assigned designee within seven (7) calendar days. All quotes shall be Not-to Exceed (NTE) time and materials (unless otherwise instructed by the TU PM or assigned designee) on the vendors letterhead and include the following:
  - a. Reference Contract TU-2430
  - b. Date proposed to start work and schedule
  - c. Area(s) to be completed
  - d. Price breakout in accordance with Contract pricing, including position, number of hours, itemized material estimate with cost, itemized equipment rental (if applicable) with applicable mark-up
3. Failure to adhere to these quote procedures may delay acceptance of quote and/or issuance of PO.

G. Invoices

1. Payments to the Contractor pursuant to this contract shall be made no later than 30 days after the University's receipt of a proper invoice from the Contractor. All invoices shall be submitted to [StratUsAPinvoices@towson.edu](mailto:StratUsAPinvoices@towson.edu) , upon completion and acceptance of work to Towson University, Accounts Payable Department as instructed on the Purchase Order.

Each invoice must clearly state the following:

- a. Purchase Order Number (if applicable) and Contract Number TU-2430
  - b. Date work was started and completed
  - c. Area completed – List
  - d. Price breakout in accordance with Contract pricing, including all back-up documentation e.g. – daily work tickets listing position, number of hours worked, receipts for materials and rental equipment etc.
  - e. Monthly Service Report as outlined in section IV.E.1 of this solicitation, when applicable.
  - f. Roof Condition Assessment as outlined in section IV.E.2. of this solicitation, when applicable.
  - g. Contractor Federal Tax ID number
2. In addition to the invoice requirements listed above, invoices that include pesticide application must also include the following:
    - a. Pesticide label copy and amount used
    - b. Fungicide label copy and amount used
    - c. Fertilizer label copy and amount of nitrogen used
  3. Failure to adhere to these invoicing procedures may result in delay of payment.

## **VII. Warranty/Guarantee and Replacement**

- A. Contractor shall provide a one (1) year warranty on labor and materials for any hardware or structure repair. If the Contractor upon routine inspection finds pre-existing damage, then, that repair shall be covered by the University.

- B. Only herbaceous plants installed by the successful Contractor are subject to a 6-month warranty.
- C. The successful Contractor shall give a count for number of plants or square footage planted and mark those planted areas with flags. The plant material shall be photographed at time of planting and included with the Monthly Service Report. The University inspects the green roofs monthly.
- D. All plants shall be installed according to the landscape Services manager. The warranty shall begin the date the installation is completed. At the end of the six-month warranty period, the Contractor and Landscape Services Manager shall perform a site walk of all roofs. Replacements shall be agreed upon by both the Contractor and Landscape supervisor. Plants not rooted in by the end of the six-month warranty period shall be replaced in-kind by the contractor.
- E. Success shall be based on the University's monthly inspections and the Contractors Monthly Maintenance Service Reports.
- F. Any plant material installed by the contractor shall have a 90% survivability rate at the end of the 6-month warranty.
- G. The Contractor is not responsible for losses, repair or replacement of damaged work or plant material resulting from theft, extreme weather conditions, vandalism, vehicular incidents (other than Contractor's vehicles) or the acts of others over whom they have no reasonable control.
- H. The Contractor shall replace, at no additional cost to the University, any turf or plant materials damaged as a result of improper maintenance attention or procedures in conformance with the landscaping master plan.
- I. Replacement material shall be of the same size and variety as the dead or damaged material.
- J. The Contractor must replace plant material within two weeks of identification of damage. Alternatives to size, variety and scheduling of replacement are only allowed by written permission of the TU PM or assigned designee.
- K. The Contractor shall inform the TU PM or assigned designee monthly of plant losses not covered by warranty and unrelated to the maintenance activities. The Contractor must provide the TU PM or assigned designee with the cause of the plant loss and provide recommendations (in line with the specification) for replacement along with pricing for replacement.

# Attachment A: Green Roof Drawings

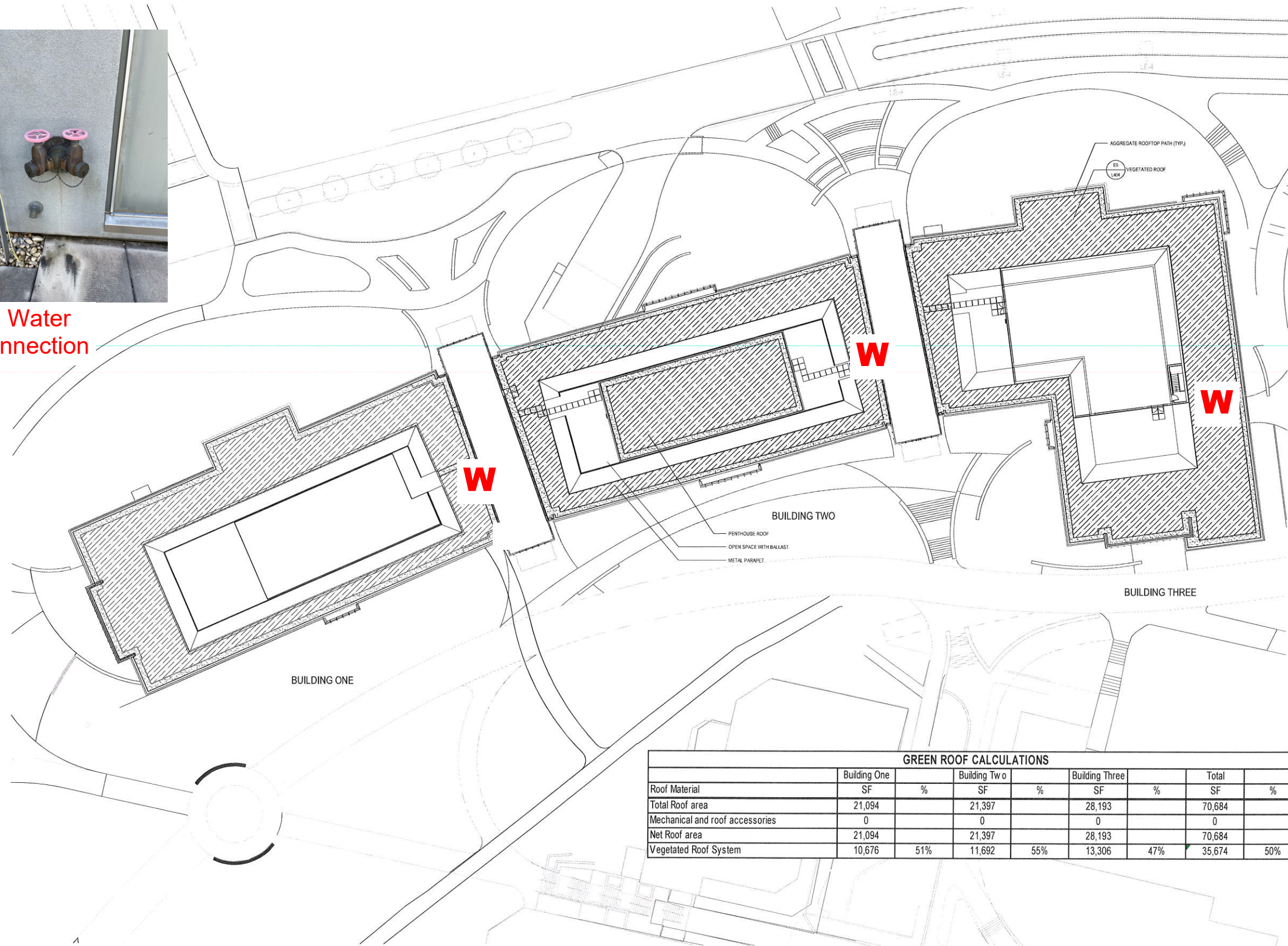
1. College of Liberal Arts
2. Health and Counseling Center at Ward & West
3. West Village Commons



# College of Liberal Arts - Green Roof Drawing



FD Water Connection



GREEN ROOF CALCULATIONS								
	Building One		Building Two		Building Three		Total	
Roof Material	SF	%	SF	%	SF	%	SF	%
Total Roof area	21,094		21,397		28,193		70,684	
Mechanical and roof accessories	0		0		0		0	
Net Roof area	21,094		21,397		28,193		70,684	
Vegetated Roof System	10,676	51%	11,692	55%	13,306	47%	35,674	50%



PHASE 2  
95% CD SET  
NOT FOR  
CONSTRUCTION  
3/16/2009

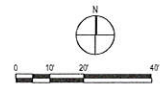
**BURT, HILL**  
1064 Thomas Jefferson St.,  
N.W.  
Washington, DC 20007  
Tel: 202-333-2711  
Fax: 202-333-2139  
www.burthill.com

NO.	DATE	REV

COLLEGE OF LIBERAL ARTS  
GREEN ROOF PLAN (ALTERNATE)  
PHASE II  
PROJECT NO. 05-907  
DATE: 3/16/2009

L - 302

SHEET OF





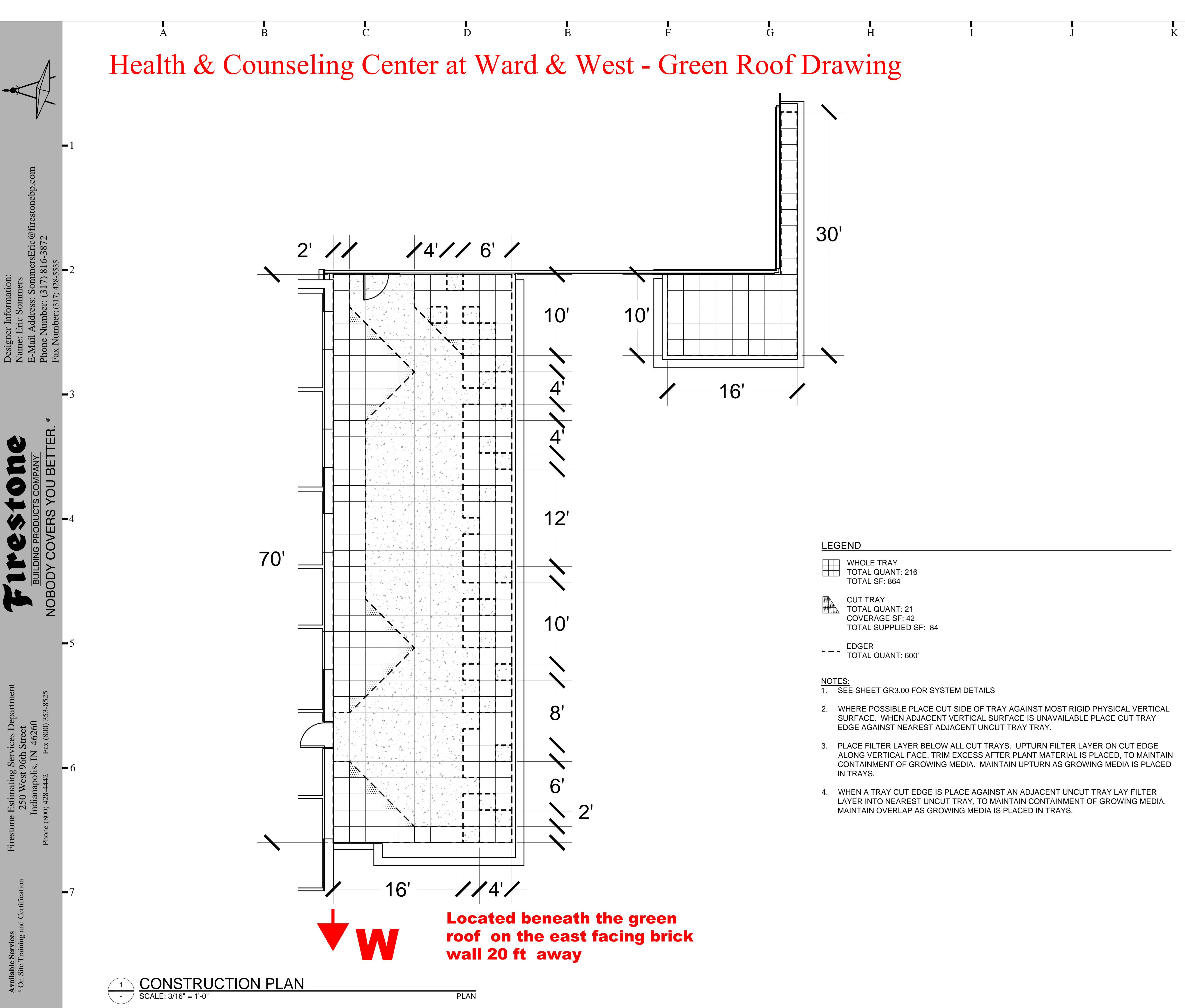
# Health & Counseling Center at Ward & West - Green Roof Drawing

Designer Information:  
 Name: Eric Sommers  
 E-Mail Address: SommersEric@firestonebp.com  
 Phone Number: (317) 816-3872  
 Fax Number: (317) 428-5535

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 \* On Site Training and Certification



- LEGEND**
- WHOLE TRAY  
TOTAL QUANT: 216  
TOTAL SF: 864
  - CUT TRAY  
TOTAL QUANT: 21  
COVERAGE SF: 42  
TOTAL SUPPLIED SF: 84
  - EDGER  
TOTAL QUANT: 600'
- NOTES:**
1. SEE SHEET GR3.00 FOR SYSTEM DETAILS
  2. WHERE POSSIBLE PLACE CUT SIDE OF TRAY AGAINST MOST RIGID PHYSICAL VERTICAL SURFACE. WHEN ADJACENT VERTICAL SURFACE IS UNAVAILABLE PLACE CUT TRAY EDGE AGAINST NEAREST ADJACENT UNCUT TRAY TRAY.
  3. PLACE FILTER LAYER BELOW ALL CUT TRAYS. UPTURN FILTER LAYER ON CUT EDGE ALONG VERTICAL FACE, TRIM EXCESS AFTER PLANT MATERIAL IS PLACED, TO MAINTAIN CONTAINMENT OF GROWING MEDIA. MAINTAIN UPTURN AS GROWING MEDIA IS PLACED IN TRAYS.
  4. WHEN A TRAY CUT EDGE IS PLACE AGAINST AN ADJACENT UNCUT TRAY LAY FILTER LAYER INTO NEAREST UNCUT TRAY, TO MAINTAIN CONTAINMENT OF GROWING MEDIA. MAINTAIN OVERLAP AS GROWING MEDIA IS PLACED IN TRAYS.

## GENERAL NOTES

1. The Firestone estimating services are provided as a service for practicing roof design professionals such as architects, engineers, landscape architects, and other professionals. Firestone Estimating Services is not responsible for the accuracy of the information provided. The user of these services shall be responsible for the appropriate level of professional judgment and liability to provide the appropriate SkyScape layout and installation. No Firestone Estimating Services representative is authorized to provide any other services.
2. All job conditions such as overhang, area, system type, irrigation systems (including slope, selection, edger type, etc.), grow media, structural load capacity, drain locations, etc., have been provided by the architect, roofers and landscape architect via mail, e-mail and verbally by the Firestone Estimating Services Department. All information must be confirmed by the roofing contractor before any work is made in the field. The criteria shown below, Firestone Estimating Services, does not guarantee the right to bid the project.
3. Shop drawing must be approved by the architect or the contractor. The contractor must be returned to Firestone Estimating Services Department for information and shipment of materials.
4. Once the material has been ordered, the contractor is not responsible for its safekeeping or shortages discovered.
5. The roofing contractor must provide all material pieces with packing lists. All discrepancies must be reported immediately to Firestone Estimating Services Department.
6. Irrigation point of connections per manufacturer supporting PVC mainline piping, PVC lateral line / drip line header and automated valves, and control units will be supplied by others.
7. All irrigation components shall be installed per all applicable local and state building and plumbing codes.

## SHOP DRAWING APPROVAL

I understand that the information and dimensions provided to and used by Firestone Estimating Services Department may have been supplied by a third party source. Therefore, with my signature:

I have provided Firestone Estimating Services Department with correct field conditions, including actual field dimensions, drain locations, structural slopes and roof curb locations, that may alter the drainage pattern. Therefore, I accept the tapered design shown on this drawing.

I have not measured the roof or confirmed correct field conditions, including drain locations, structural slopes and roof curb locations that may alter the drainage pattern shown on this drawing. However, I accept this design as shown and take full responsibility for any errors, shortages, and/or omissions that may occur.

Please sign below and fax to Firestone Estimating Services Department at 800-353-8525.

Name: \_\_\_\_\_ Company: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## PROJECT INFORMATION

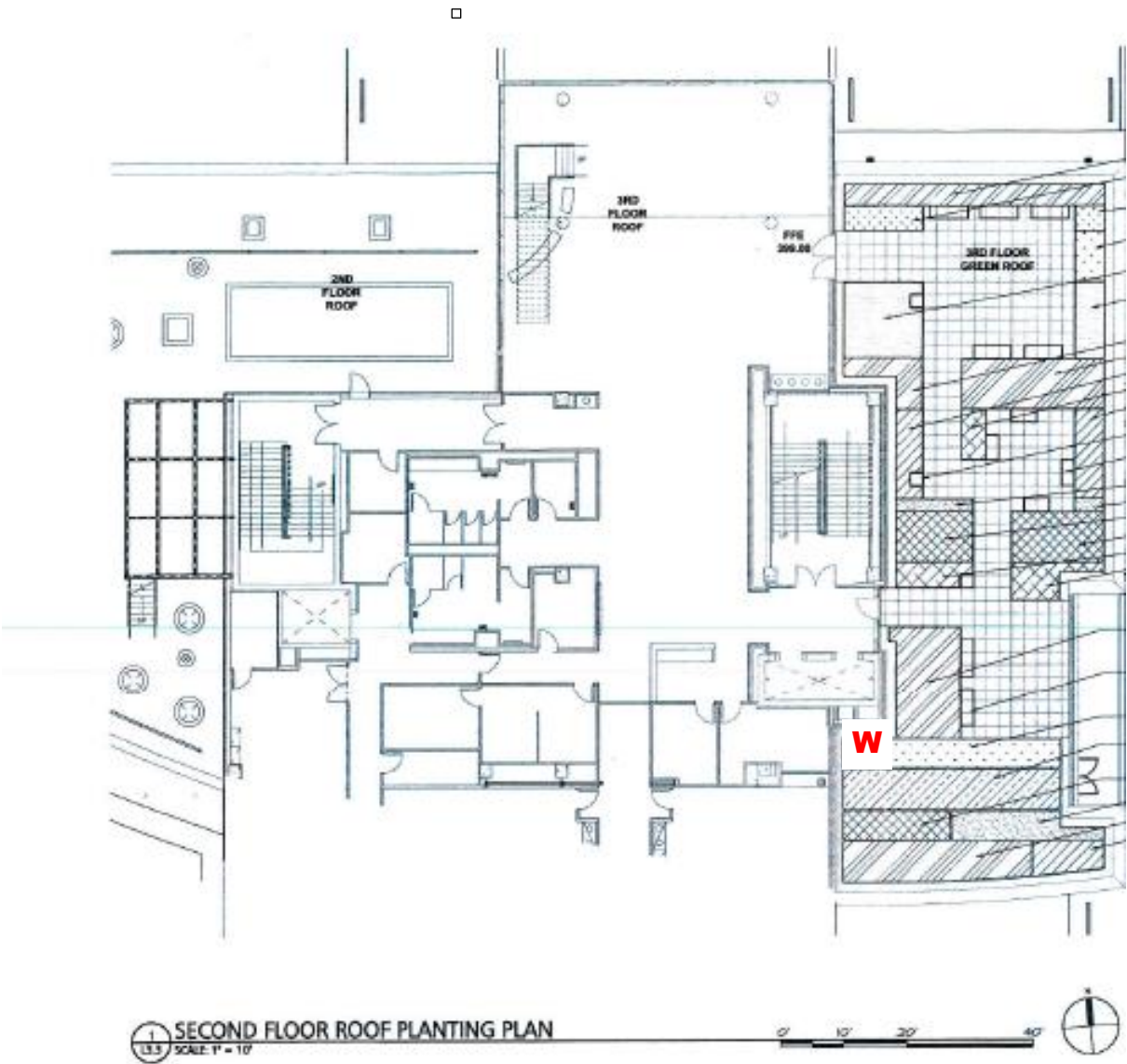
Project: Towson University Health & Counseling Center  
 Location: Towson, MD  
 Firestone Quote Number: 12-MD-5260  
 CGT Quote Number: \_\_\_\_\_  
 Quote Version Number(s): \_\_\_\_\_ Page: 1 of 2  
 Estimated by: E. Sommers Date: 7/23/2013  
 Drawn by: R. Littleton  
 Drawing Scale: 3/16" = 1'-0"  
 Contractor: \_\_\_\_\_

Architect: \_\_\_\_\_



# GR1.00

West Village Commons - Second Floor Green Roof Drawing



**ATTACHMENT B : Towson University Green Roof Monthly Maintenance Form**

<b>Site Name:</b>			<b>Date:</b>
<b>Inspection Activity</b>	<b>Required</b>		<b>Notes</b>
	YES	NO	
Weeding - hand pulling remove from site			
Weed Control			
Debris clean up - remove from site			
Minor Roof flashing Repair			
Vegetation coverage ( less than 85%) If less - provide quote for replacement			
Fertilization			
Pest inspection - list pest and treatment			
Clean Drain Covers - check clogs and water pooling			
Repair media erosion			
Inspect edging , joints, borders and repair			
Irrigation /Handwatering			
<b>Attach Photos on separate sheet -</b> for example; vegetative cover , erosion , hardware repair, <b>etc.</b>			
<b>Maintenance Actions for next Service visit -</b>			
<b>BIANNUAL GREEN ROOF ASSESMENT - FOR MARCH AND NOVEMBER ONLY</b>			
<b>Inspection Activity</b>	<b>Needs Attention</b>		<b>Notes</b>
	OK	NOT OK	
Filter Bed / Growing Medium - conditions -			
Vegetation Coverage %			
Protective Layers - Including Gravel Borders			
Drainage Systems - ie Overflow Outlets , Pipes			
Roof -ie. flashing , other visible structure damages			
Site Supervisor Signature			

**Attachment D**  
**Maryland Green Purchasing Committee Approved Specification –**  
**Landscaping Services**

**Environmentally Preferable Purchasing:**

The State of Maryland is committed to purchasing environmentally preferable products and services (EPPs). Maryland's State Finance & Procurement Article §14-410 defines environmentally preferable purchasing as "the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose."

Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

**Maryland Green Purchasing Requirements:**

The State of Maryland requires, at a minimum, from the Contractor annual sales data over the life of this contract; the State also reserves the right to request quarterly sales data over the life of this contract.

The report shall include at a minimum detail about the third-party sustainability certifications and other environmental attributes of products and services sold on this price agreement per the contract specifications.

To facilitate consistent reporting on this contract, attached is "**Attachment C - VENDOR GREEN SALES REPORT**" template from the Green Purchasing Committee (GPC).

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.

**Environmental Claims:**

All environmental benefit claims made by the Contractor concerning products or services offered on this contract must be consistent with the [Federal Trade Commission's Guidelines for the Use of Environmental Marketing Claims](#).

**Verifying Environmental Claims (Md. Code Ann., State Fin. & Proc., §14-410)**

A bidder or offeror for a procurement contract shall certify in writing that any claims of environmental attributes made relating to a product or service are consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms.

**Pollinator Protection Act of 2016 (2016 Md. Laws 7072)**

The sale and use of neonicotinoid pesticides is prohibited in the State, with certain exceptions.

**Low Noise Supplies (State Fin. & Proc., §14-403)**

To the extent practicable, each unit of the State government shall buy or lease for use by the State government supplies that are the quietest available supplies.



**Limitations on Hazardous Substances (Md. Code Ann., Env't, §6-1201)**

A person may not manufacture, process, sell, or distribute in the State a new product or flame-retardant part of a new product that contains more than one-tenth of 1% of pentaBDE (pentabrominated diphenyl ether) or octaBDE (octabrominated diphenyl) by mass.

**Limitations and Prohibitions on Heavy Metals in Packaging (Env't §9-1902(a)-(b))**

A manufacturer or distributor may not sell or offer for sale or for promotional purposes any package or packaging component or any product in a package or packaging component to which any of the following was intentionally added during manufacture or distribution: (1) Lead; (2) Cadmium; (3) Mercury; or (4) Hexavalent chromium.

**Noxious Plants (Env't §9-401-406)**

No person may (1) Import or transport a noxious weed in the State in any form capable of growth; or (2) Contaminate any uninfested land with a noxious weed through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or any other artificial medium.

**SUSTAINABLE LANDSCAPING- TEN FOUNDATIONAL PRINCIPLES:**

State government shall buy or lease the quietest available supplies. Low-noise-emission certified products must meet the requirements of the federal Noise Control Act of 1972.

Best practices and performance goals for the design, construction, and maintenance for sustainable landscaping shall be based on the ten foundational principles found on page 5 of [Guidance for Federal Agencies on Sustainable Practices for Designed Landscapes](#).

**PROHIBITED PRODUCTS AND ACTIVITIES**

- A. The use of neonicotinoid pesticides is prohibited.
- B. The installation of plants treated with neonicotinoids is prohibited.
- C. Pursuant to Md. Code Ann., Transp., §22-402, vehicle idling is prohibited.
- D. The disposal of biodegradable material as garbage, except noxious weed debris.
- E. The use of combination products (e.g., "weed and feed", weed control + fertilizer, insect control + fertilizer, etc.).
- F. Composts, fertilizers, and other soil amendments used for State projects must not contain intentionally added per- and polyfluoroalkyl substances (PFAS)(The bidder is required to submit written evidence that compost and fertilizer products are compliant with this requirement).

**CONTRACTOR REQUIREMENTS**

- A. The Contractor will provide staff able to perform work at the highest standards of horticultural practice. Key staff shall have current knowledge of best management practices (BMPs) regarding sustainable landscaping design, native plant selection, invasive plant identification and removal, plant health, pruning, pesticide application, irrigation maintenance, and safety procedures. The University reserves the right to demand the replacement of Contractor's staff who do not meet the owner's standards for safety, professionalism, or horticultural knowledge.
- B. Maryland's invasive plant list can be found in the Maryland GPC landscaping plants specification [here](#).
- C. All work shall be performed under the direct on-site supervision of a qualified landscape professional with a minimum of one year combined horticultural education and experience.

- D. The supplies and equipment purchased and used for landscaping projects on State sites must comply with the prohibitions and minimum requirements of the Maryland Green Purchasing Committee Landscaping Supplies Specification.
- E. Applications of pesticides must be conducted by a certified and licensed Pesticide Applicator as recognized by the Maryland Department of Agriculture.
- F. The Contractor must provide employees with proper initial, on-site (or site-specific), and annual in-service training. Training must be done in a manner that respects any unique needs of the employee, such as limited English proficiency, physical challenges, or learning disabilities.
- G. The on-site supervisor shall have special training and/or working knowledge of Integrated Pest Management (IPM) assessments and treatment strategies in urban landscape conditions. The on-site supervisor may be required to provide recommendations to the State on pest management.

### **REQUIREMENTS FOR PLANT SELECTION & INSTALLATION**

This section applies to all plants, shrubbery, trees, etc. used at State sites.

- A. To the maximum extent practicable, only plants native to Maryland must be installed on State property. For guidance on native plant selection, refer to the Maryland Green Purchasing Committee specification for landscaping plants here.
- B. Prior to plant installation, the Contractor will notify the State of any invasive plants that are currently established at the site. Removal of invasive plant species will be coordinated with the State in advance, at a schedule determined by the TU PM or assigned designee.
- C. Scheduled plant installations must occur in the months of spring (March – June) or fall (September – December).
- D. For planting containerized trees and shrubs, the root ball must be scarified and untangled so the circling roots grow outward to allow optimal plant growth. It must be planted at the proper soil depth, exposing the root flare of the tree/shrub, and about 10% of the root ball above ground level.

### **PLANTING INSTALLATIONS**

- A. Invasive plant identification and removals must be completed at the site as part of ongoing maintenance.
- B. The Contractor must strictly consider if watering and fertilizer is required.
- C. While native plants may require water for a period after installation, once established, native plants are suited to the local climate and do not require additional watering or fertilizer.

### **PRUNNING**

- A. Prune plantings only as necessary, appropriate to site, need, season and plant species. The Contractor must discuss significant pruning work with the TU PM or assigned designee prior to work beginning.
- B. All pruning will be performed by, or under the direct on-site supervision of, staff with documented education and training in proper and naturalistic pruning techniques.
- C. Pruning must only be performed by trained personnel in accordance with accepted horticultural practices.
- D. Pruning shall be conducted to enhance the natural growth and shape of plant materials and intended function of the planting.

- E. Shrub plantings are designed to grow together and to the edges of the beds to minimize weed infestation and maximize water conservation. Prune to encourage a dense, continuous planting, with natural shape and branches reaching fully to the ground.
- F. Shearing is only permitted for formal hedges. Do not shear shrubs into topiary (shapes). Prune back branches as needed when interfering with walks, buildings, signage, fire control utilities, site lighting, security/safety visibility, site lighting, and vehicular circulation.
- G. Ground covers are to be trimmed so they meet but do not grow over walkways or outside any of the planters.
- H. The Contractor must replace plant materials that are disfigured or damaged due to improper pruning at no additional cost to the State.

### **MULCH REPLACEMENT AND REPLENISHMENT**

- A. Mulch must meet the requirements set forth in the Maryland Green Purchasing Committee's Environmentally Preferable Specification for Landscaping Supplies.
- B. When replacing existing mulch, use a mulch product that is similar in appearance to that already at the site.

### **WEED, PEST, AND DISEASE CONTROL**

- A. Use cultural methods (mulch, proper pruning, proper irrigation) to encourage plant health and growth and discourage weeds.
- B. Keep planter beds and tree wells free of weeds and debris on a rotational basis, per site visit throughout the year by hand pulling or other mechanical means.
- C. The entire site shall be weeded by hand or mechanical weeding methods that remove the roots per site visit.
- D. Use of pre-emergent herbicides is not permitted without prior written approval of the TU PM or assigned designee and on an incident-by-incident basis. Pre-emergent herbicides shall only be used on sites with at least two years of plant establishment. Areas considered for pre-emergent use are limited to tree wells and mulch-only beds without groundcover. Pre-emergent herbicides are not allowed in planted shrub beds or graveled pedestrian walkways.
- E. Standard maintenance, non-chemical practices must be documented in areas where pre-emergent use is being considered before approval for use must be given. Standard maintenance practices include hand weeding, edgings, mulch application, and proper pruning.
- F. Apply insecticide or fungicide to trees, shrubs and groundcovers only when significant plant damage would result from not addressing the infestation.
- G. Regularly scheduled calendar-based applications of pesticides are not allowed without prior approval of the TU PM or assigned designee.
- H. Preventative "blanket" applications of pesticides is not allowed without prior approval of the TU PM or assigned designee.
- I. If the Contractor determines that calendar-based or "blanket" applications may be needed, the Contractor shall provide the TU PM or assigned designee with two weeks advance notice of request. The TU PM or assigned designee will determine if such applications will be allowed. The Contractor shall provide the TU PM or assigned designee with the following information in a request for calendar-based or "blanket" application of any pesticide:
  1. Identification of pest and reasons for control is required.
  2. Description of the cultural, non-chemical, and/or spot application of pesticides already tried and assessment of success or failure of those remedies.
  3. Product recommendation and information on health and environmental hazards of that product.



- J. The TU PM or assigned designee will determine if a calendar-based or “blanket” application will be allowed and if so, may request that the Contractor use an alternate product, based on health and environmental information.
- K. The Contractor is responsible for any damage to plant material incurred as a result of failure to immediately notify the State of correctable disease and/or insect problems, and the Contractor must replace any such damaged plant material at no additional cost to the State.

**The Contractor must contact the TU's Department of Environmental Health and Safety (EHS) (410-704-2949) immediately following any spill of a hazardous material in excess of one (1) quart.**

**1. Occupational Safety And Health Act (O.S.H.A.)**

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

**2. Hazard Communication Standard**

The Contractor will be responsible for advising all of its employees of their rights under the University's Hazard Communication Program, or more commonly referred to as the Right To Know (RTK) Program. The University will supply the vendor with sufficient copies of its Employee Safety Program (ESP) booklet which outlines this program. Each and every Contractor who physically works on campus shall be required to sign a form acknowledging the receipt of the ESP booklet and their rights/responsibilities pursuant to this program. The University's Department of Environmental Health and Safety is responsible for administering the RTK program and will handle all information regarding this program. Failure to adhere to the requirements of the RTK Program may result in implementation of punitive action such as the cancellation of the contract(s).

Pursuant to the provisions of the RTK Program, the Contractor will be responsible for the following:

**a.** Submission to the Contract Services Office and EHS of a complete list of all chemicals or chemical products to be used on the University's property. This listing shall include the chemical name, common name, manufacturer's name, quantity and location (building and room number) for each product. This listing shall be given to EHS by no later than two (2) weeks prior to the start of any work under this contract. Changes, additions, or deletions to the complete campus chemical list must be submitted in writing five (5) working days prior to the actual change occurring. All proposed changes must be approved in writing by EHS prior to the actual use of the new product on campus.

**b.** Submission to the Contract Services Office and EHS of the manufacturer's Material Safety Data Sheet (MSDS) for all chemicals or chemical products to be used or in use at the University. These MSDS must be delivered, no later than two (2) weeks prior to the start of any work under this contract. There must be a MSDS for every product in use or present on the campus unless exempted in writing by EHS. MSDS's for any changes or additions to the complete campus chemical list must be submitted five (5) working days prior to the actual change occurring. All proposed changes must be approved in writing by EHS prior to the actual use of the new product on campus. The University, through EHS, reserves the right to order a change in the use, storage, or method of handling of

any chemical/chemical product that it feels poses an unreasonable hazard to the University's community.

NOTE: In the absence of the original manufacturer's MSDS, EHS will accept a generic equivalent as long as a letter from the Contractor stating that the original is not available is attached.

**c.** The Contractor must warrant in writing to Towson University's Contract Administrator that all employees have been trained and will continue to be trained in the proper and safe storage, handling, use and disposal of all chemicals/chemical products in use.

**d.** The Contractor agrees to obey and follow all local, state, and federal regulations regarding the storage, handling, use and disposal of all chemicals/chemical products. The Contractor agrees to properly dispose of all regulated waste in accordance with all applicable regulations and to make available to EHS all records necessary to support such activity.

**3. Asbestos**

The Contractor is responsible for training and equipping all personnel concerning work in asbestos environments as applicable. They must be trained as prescribed by COMAR 26.11.21. All new employees must be trained within 30 days after they are hired by the Contractor. This is to be accomplished at no additional cost to this contract or the University. An initial report on all employees as to their asbestos training will be presented to the Contract Administrator within the first 90 days of the Contract and updated on a monthly basis. Thereafter, failure to comply with this requirement would place the Contractor in default status.

**4. Lead Paint**

The Contractor is responsible for training and equipping all personnel concerning work in lead paint containing environments as applicable. Employees must be trained as required within 60 days of contract commencement and all new employees must be trained within 30 days after they are hired by the Contractor. This training will be provided by the Contractor at no additional cost to this contract or the University. An initial report on all employees as to their lead paint training will be presented to the Contract Administrator within the first 90 days of the contract and updated on a monthly basis. Thereafter, failure to comply with this requirement would place the Contractor in default status.

**5. Fire Safety**

The Contractor agrees to comply with and follow all local, state, federal and University regulations regarding fire safety. It is the Contractor's sole responsibility to become familiar with all of the applicable regulations and policies. Copies of the University's policies and procedures are available from EHS.

The Contractor will be responsible for the following:

**a** To provide all of its employees with sufficient training to ensure that they are fully aware of all pertinent regulations and policies in effect regarding fire safety.

**b** To ensure that all of its employees are aware of and react to the University's Emergency Procedures including, but not limited to, fire drills and evacuations. All employees must be instructed on the proper personnel to call to report an emergency.

**c** All portable electrical devices including extension cords should be disconnected at the completion of the work assigned. All electrical equipment must be approved by Underwriters Laboratory and maintained in good working order. Under no circumstances shall damaged electrical equipment be utilized on this campus.

**d** After pulling the fire alarm, evacuate the building to a safe location and contact the University Police by dialing extension 42133 immediately. If using a pay phone, dial 911 direct.

**e** SMOKING IS NOT ALLOWED IN ANY OF THE BUILDINGS. Any employee of the Contractor, who wishes to smoke during a designated break, must do so outside.

The Contractor is responsible for fully complying with TU Hot Works Permitting Program. A Hot Works Permit is required any time a Contractor is doing any work on campus involving an actual or potential source of ignition (e.g., arc or gas welding, torch cutting, brazing, open flame soldering, grinding, fired space heaters, etc.); or may potentially cause the activation of a building fire alarm system; or may cause building occupants to notify emergency response agencies about the smell of smoke, heat, etc.

Hot Works Permits are issued prior to the start of the work by EHS at 410-704-2949.

The Contractor assumes all responsibility for any work delays associated with noncompliance with the Hot Works Permit Program.

## **6. Bloodborne Pathogens**

The Contractor will be responsible for providing the required training dealing with occupational exposure to bloodborne pathogens. Employees who have received this training may be required to perform services in areas where they may be at risk of exposure to blood or other potentially infectious materials. Some responsibilities will include collection of domestic trash in areas that generate special medical waste, regular cleaning in these areas and spill response for accidents that occur on campus that involve blood. Employees must be informed on the potential hazards present in these areas and the proper protective measures that can be taken to prevent exposure. EHS is available to provide more information concerning the areas on campus where personnel are at risk of exposure.

## **7. Confined Space Entry**

The Contractor agrees to comply with all local, state and federal regulations pertaining to the entry into confined spaces. The Contractor is responsible for contacting the TU's Contract Services Manager in the Department of Facilities Management for the location of all campus-confined spaces and for identifying any confined space hazards **prior** to entry into a confined space. The Contractor is responsible for ensuring his/her workers and Subcontractors are adequately trained in confined space entry procedures in accordance with OSHA 1910.146, Permit Required Confined Spaces for General Industry.

The Contractor will provide the Contract Administrator with a written copy of their Confined Space Entry Plan (CSEP) for review and approval at least 5 working days in advance of the planned entry. Prior to work commencements, the Contractor will also certify in writing that all of his/her workers and Subcontractors have been trained in accordance with OSHA 1910.146, Permit Required Confined Spaces for General Industry. This certification will list all employees working on campus by name and social security number.

If the Contractor's CSEP is approved, the Contractor may utilize his/her CSEP for entering into campus confined spaces. If disapproved, or if the Contractor does not have a written CSEP, the Contractor will comply with the University's CSEP. Until such time as the Contractor provides written certification that all of his/her employees and Subcontractor employees working on campus have been adequately trained in confined space entry procedures, entry in TU confined spaces is strictly forbidden. Questions concerning TU CSEP should be directed to EHS.

The Contractor assumes all responsibility for any work delays associated with noncompliance with confined space regulations.

## **8. Respiratory Protection**

The Contractor agrees to comply with all local, state and federal regulations pertaining to the use of respiratory protection equipment. It is the Contractor's responsibility to ensure their workers are provided and wearing the appropriate respiratory protection device suitable to the hazard.

The Contractor will provide the Contract Administrator with a written copy of their Respiratory Protection Plan (RPP) for review and approval at least 5 workdays in advance of the planned entry. If approved, the Contractor may utilize his/her RPP while on campus. If disapproved, or if the Contractor does not have a written RPP, the Contractor will comply with the University's RPP. Questions concerning TU RPP should be directed to EHS at 410-704-2949.

The Contractor assumes all responsibility for any work delays associated with noncompliance with respiratory protection regulations.

## 9. Waste Disposal

The Contractor is responsible for the removal and disposal of all non-hazardous waste products generated from his/her work on campus. All non-hazardous waste materials generated by the Contractor shall be removed from campus (unless otherwise specified) and disposed of in accordance with all applicable federal, state and county laws and regulations. The University reserves the right to require the use of a TU Non-Hazardous Waste Manifest for transport off campus of any University non-hazardous waste. The University also reserves the right to approve or disapprove the facility(ies) the Contractor utilizes for disposal of any University non-hazardous wastes (as necessary). All costs will be borne by the Contractor for the disposal of all hazardous or non-hazardous wastes, unless otherwise specified in the contract.

Under no circumstances is any Contractor's generated hazardous waste to be disposed of on campus. The Contractor is responsible for the removal and proper disposal of all his/her hazardous waste, in accordance with all applicable federal, state and county laws and regulations. Contractor's generated hazardous waste is waste resulting from their operations/equipment on campus when using Contractor owned/supplied materials/chemicals. Disposal costs for this will be borne solely by the Contractor.

The University routinely performs wastewater monitoring in accordance with its Industrial Wastewater Discharge Permit and routinely screens campus discharges for hazardous wastes. The Contractor will be held liable for any assessed penalties attributable to the improper discharge of hazardous wastes from campus facilities.

Contracts that require Contractors to transport and/or dispose of regulated hazardous materials (i.e., hazardous wastes) owned and/or generated by Towson University will be disposed of by Towson University Environmental Health & Safety utilizing existing University hazardous waste disposal contractors. The Contractor should contact EHS as soon as the hazardous wastes have been identified to coordinate the disposal.

All transportation and disposal costs will be paid by Towson University and then back charged to the Contractor.

Any questions concerning the disposal of hazardous or non-hazardous waste should be directed to EHS at 410-704-2949.

## 10. The Control of Hazardous Energy Source (Lock Out/Tag Out)

The Contractor agrees to comply with all local, state and federal regulations pertaining to the control of hazardous energy sources. The Contractor is responsible for insuring his/her workers and any Subcontractors are adequately trained in Lockout/Tagout procedures in accordance with OSHA 1910.147, The Control of Hazardous Energy Sources (Lock Out/Tag Out).

The Contractor will provide the Contract Administrator with a written copy of their Lock Out/Tag Out policy (LO/TO) and/or procedures for review and approval at least five (5) working days in advance of the commencement date of the contract.

Prior to work commencement, the Contractor will also certify in writing that all of his/her workers and Subcontractors have been trained in accordance with OSHA 1910.147. This certification will list all employees working on campus by name and social security number.

If the Contractor's LO/TO is approved, the Contractor may utilize their LO/TO for work on hazardous energy sources. If disapproved, or if the Contractor does not have a written LO/TO, the Contractor will comply with TU LO/TO Policy/Procedures. Until such time as the Contractor provides written certification that all his/her employees and Subcontractors working on campus have been adequately trained in LO/TO procedures, work on hazardous energy sources is strictly forbidden. Questions concerning TU LO/TO Policy/Procedures shall be directed to EHS at 410-704-2949.

The Contractor assumes all responsibility for any work delays associated with noncompliance with the control of Hazardous Energy Sources regulations.

## 11. Wastewater/Sewer Discharge

The University's Wastewater Discharge Permit strictly prohibits the disposal of waste chemicals and corrosives via the sanitary sewer system. NO waste chemicals (i.e., old, unused, excess, etc.), including, but not limited to, organic solvents and/or corrosives (pH less than or equal to 6 and greater than or equal to 10) will be disposed of on campus via the sanitary sewer system without advance written approval of the TU Department of Environmental Health & Safety (EHS). The Contractor shall submit MSDS's for all waste chemicals they wish to dispose of in the sanitary sewer to EHS five (5) working days in advance for approval.

The University routinely performs wastewater monitoring in accordance with its Industrial Wastewater Discharge Permit and routinely screens campus discharges for waste chemicals and corrosives. The Contractor will be held liable for any assessed penalties attributable to the improper discharge of these materials from campus facilities.

The Contractor is subject to unannounced inspections of the chemicals their employees are using on campus. TU Department of Environmental Health & Safety will conduct these unannounced inspections.

## 12. Safety Training/Inspections/Meetings

The Contractor is responsible to notify the Contract Administrator five (5) working days in advance of the date, time and location of their monthly safety meeting.

## 13. Materials

No asbestos, lead, or PCB containing materials (0%) are to be utilized /installed on campus unless prior written approval has been received from the University's Department of Environmental Health & Safety (410-704-2949).

## 14. Stormwater Pollution Prevention/Prohibition of Illicit Discharges

No person shall cause or contribute discharge directly or indirectly into the Towson University municipal storm drain system or waterways any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

Refer to **06-20.00 – University Policy on Stormwater Illicit Discharge Detection and Elimination** for additional information.

No person may improperly store, handle, use or apply any pollutant in a manner that will cause its exposure to rainfall, runoff and discharge into the Towson University municipal storm water drain system or campus waterways.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described:

**a.** The following discharges are exempt from discharge prohibitions:

water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire-fighting activities, and any other water source not containing pollutants.

**b.** Any discharges specified in writing by Towson University Environmental Health & Safety as being necessary to protect public health and safety.

**c.** Dye testing only with required verbal notification to Towson University Environmental Health & Safety [(410) 704-2949 or [safety@towson.edu](mailto:safety@towson.edu)] prior to the time of the test.

**d.** The following discharges are exempt from discharge prohibitions: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire-fighting activities, and any other water source not containing pollutants.

### **15. Prohibition of Illicit Connections**

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, any illicit connections made in the past. This is regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A

person is considered to be in violation if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

### **16. Notification of Spills or Illicit Discharges**

Notwithstanding other requirements by law, as soon as any contractor has information regarding any known or suspected release of materials that result or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, campus waterways said person shall take all necessary steps to ensure the discovery, immediate containment, and cleanup of such release. **In the event of a release of hazardous materials or upon observing an illicit environmental discharge immediately contact the Towson University Police Department (TUPD) at (410) 704-4444.** In the event of a release of non-hazardous materials, notify Towson University Environmental Health & Safety in person or by phone [(410) 704-2949] or e-mail [safety@towson.edu](mailto:safety@towson.edu) no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to Environmental Health & Safety, Towson University, 8000 York Road, Towson, MD 21252 within three business days of the phone notice.

### **17. Enforcement**

**a.** Enforcement for student violators will follow the TU Office of Student Conduct and Civility Educations *Code of Student Conduct*.

**b.** Enforcement for University employees (Faculty and Staff) shall follow the Towson University Policy for discipline or termination *Policy No. 07.05.25 – Disciplinary Action for Employees*.

**c.** Enforcement for Visitors (Non-TU Faculty, Staff, Students or Contractors)

**d.** Individuals or Contractors, depending on the nature and severity of the violation, may be referred to MDE for prosecution for violation of federal and state laws and regulations.

**e.** Any fines, penalties, environmental monitoring or remediation expenses, etc., resulting from the illicit discharge, will be violator's responsibility.

**f.** During normal University business hours (Monday-Friday, 8am- 4pm), contact EHS at (410) 704-2949 to report violations.

**g.** If the violator is still on the scene, they should also immediately contact TUPD at (410) 704-4444.

**h.** After normal duty hours, weekends and holidays, contact TUPD at (410) 704-4444 to report violations.



The provisions contained in this exhibit will be incorporated and be a part of the contract entered into between Towson University and any contractors as a result of this procurement.

**01. Affirmative Action**

The Contractor and all subcontractors shall develop and maintain affirmative action plans directed at increasing the utilization of women and members of minority groups on State public works projects, pursuant to the Executive Order 11246 of the President of the United States of America and guidelines on Affirmative Action issued by the Equal Employment Opportunities Commission (EEOC) 29 C.F.R. part 1608 and the Governor of Maryland's Executive Order 01.01.1993.16.

**02. Amendments and Modifications**

The contract documents, as defined within the contract, constitute the entire agreement between the parties hereto. All other communications between the parties prior to execution of the contract, whether written or oral, with reference to the subject matter of the contract are superseded by the agreement contained therein. No amendment of this contract shall be binding unless in writing and signed by the parties. Amendments may not significantly change the scope of the contract.

**03. Civil Rights Act of 1964**

Contractors providing materials, equipment, supplies or services to the State under the contract herewith assure the State that they are conforming to the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1988, the Civil Rights Act of 1991, and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

**04. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland, and that it will take such action, as from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies and owing the State of Maryland, or any department or agency 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 the contract;
- c. It shall comply with all federal, State and local laws, ordinances applicable to its activities and obligations under the 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 the contract.

**05. Compensation and Method of Payment**

Contractor agrees to include on the face of all invoices billed to the University, its Taxpayer Identification Number, which is the Social Security Number for individuals and sale proprietors and the Federal Employee Identification Number for all other types of organizations.

**06. Confidentiality; dissemination of Information**

Contractor shall not release any information related to services or performance of the services under this Contract, nor publish any final reports or documents without the prior written approval of the University. Contractor shall indemnify and hold harmless the State and the University, its officers, agents and employees from all harm which may be incurred by reason of dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by Contractor, its agents or employees.

**07. 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, child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or 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 State Government Article § § 15-501 et seq. of the Annotated Code of Maryland.

**08. Contract Modifications and Changes**

a. The procurement officer unilaterally may, at any time, without notice to the sureties, if any, by written order designed or indicated to be a change order, make any change in work within the general scope of the contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner 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 procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

c. Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

d. Subject to paragraph f., if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (b.) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any 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 30 days after receipt of a written change order under a. above or the furnishing or written notice under b. above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the University. The statement of claim hereunder may be included in the notice under b. above.

f. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect 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 the contract.

#### **09. Contractor's On-Site Representative**

The Contractor is required to maintain on site at all times when the work is in progress on this project an individual who represents the Contractor, is responsible for the entire project, and can communicate in English with the University's representative.

#### **10. Contractor's Invoices**

Contractor shall include its Taxpayer Identification Number on the face of each invoice billed to the University. If a Purchase Order document is issued, the Purchase Order Number must be included.

#### **11. Cooperation with University and State Representatives**

Before any of the work shall begin, the Contractor shall confer with the University's representative at the site and agree on a sequence of procedure, means of access to the premises, space for storage of materials and equipment, use of approaches, use of facilities, etc.

#### **12. Cost and Price Certification**

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:

a. A negotiated contract, if the total contract price is expected to exceed \$100,000 or a smaller amount set by the procurement officer; or

b. A change order or contract modification, expected to exceed \$100,000 or a smaller amount set by the procurement officer.

c. The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

#### **13. Default Delay and Time Extension**

Termination for Default — Damages for Delay — Time Extensions

a. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the State may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the State resulting from his refusal or failure to complete the work within the specified time.

b. If fixed and agreed, liquidated damages are provided in the contract, and if the State so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the State in completing the work.

c. If fixed and agreed liquidated damages are provided in the contract and if the State does not so terminate the Contractor's right to proceed, the resulting damage shall

consist of these liquidated damages until the work is completed or accepted.

**d.** The Contractor's right to proceed may not be so terminated nor the contractor charged with resulting damages if:

**(1)** The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

**(2)** The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

**e.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

**f.** The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**g.** As used in paragraph (4)(a) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier."

#### **14. Delivery and Acceptance**

Delivery shall be made in accordance with the specifications. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the specifications shall be delivered FOB the point or points

specified prior to or on the date specified in the solicitation. Any material that is defective or fails to meet the terms of the specifications may be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Vendors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

#### **15. Disputes**

**a.** This contract is subject to the USM Procurement Policies and Procedures.

**b.** Except as otherwise provided in this contract or by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

**c.** As used herein, claim means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

**d.** Within 30 days after contractor knows or should have known of the basis for a claim relating to this contract, contractor shall file a written notice of claim with the procurement officer.

**e.** Contemporaneously with, or within 30 days after, the filing of a notice of claim, contractor shall submit the written claim to the procurement officer. If contractor so requests, the procurement officer, on conditions the procurement officer deems satisfactory to the unit, may extend the time in which contractor must submit the claim. An example of when a procurement officer may grant an extension includes situations in which the procurement officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.

**f.** The claim shall set forth all the facts surrounding the controversy. Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of the claim.

**g.** The procurement officer shall mail or deliver written notification of the final decision within:

**(1)** 90 days after the procurement officer receives the claim if the claim is an amount for which the Appeals Board accelerated procedure, set forth in COMAR 21.10.06.12, may be used;

**(2)** 180 days after the procurement officer receives the claim for a claim not covered under §G(1) of this regulation; or



(3) A longer period that the procurement officer and contractor agree to in writing.

h. The final decision may award a contract claim only for those expenses incurred not more than 30 days before contractor was initially required to have filed the notice of claim.

i. The procurement officer's decision is the final action of the University. If the procurement officer fails to render a final decision within the time required, contractor may deem the failure to be a final decision not to pay the claim.

j. If the final decision grants the claim in part and denies the claim in part, the University shall pay contractor the undisputed amount. Payment of the partial claim is not an admission of liability by the University and does not preclude the University from recovering the amount paid if a subsequent determination modifies the final decision.

k. Contractor may file a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of notice of the decision.

l. Pending resolution of a claim, contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

#### **16. EPA Compliance**

Materials, supplies, equipment and services shall comply in all respects with the federal Noise Control Act of 1972, where applicable. Power equipment, to the greatest extent possible, shall be the quietest available. Equipment certified by the US EPA as a Low Noise Emission Product pursuant to the Federal Noise Control Act of 1972 shall be considered to meet the intent of the regulation.

The Contractor must supply and have immediately available to their employees spill containment equipment/supplies necessary to contain any hazards it may introduce to the job site. The Contractor is responsible for any and all costs incurred by the University in remediating spills or releases of materials introduced onto the job site.

Depending on the nature of the contract, the additional environmental and safety provisions contained in Exhibit A-1 may also be required

#### **17. FERPA**

The Parties agree to maintain the privacy and security of personally identifiable educational records and health information and to prevent disclosure in compliance with Federal laws.

#### **18. Gramm-Leach-Bliley Act of 1999**

The Contractor agrees that in performing its obligations under this contract, the Contractor shall comply with all requirements of a non-affiliated third-party who receives a financial institution's consumer or customer information, under the Gramm-Leach-Bliley Act of 1999 and applicable regulations thereto (the "GLB Act") and other applicable

federal and state consumer privacy acts, rules and regulations. Nonpublic personal information shall have the same meaning as that term is defined in the GLB Act.

a. The Contractor agrees to disclose such nonpublic personal information for the sole purpose of facilitating the Contractor's performance of its duties and obligations under the contract and will not disclose such nonpublic personal information to any other party unless such disclosure is (i) allowed by the GLB Act and consented to by the University, or (ii) compelled by law, in which case the Contractor will provide notice of such disclosure to the University.

b. The Contractor represents and warrants that it will, for so long as it retains nonpublic personal information, implement and maintain in place the necessary information security policies and procedures for (i) protecting the confidentiality of such nonpublic personal information, (ii) protecting against any anticipated threats or hazards to the security or integrity of such nonpublic personal information, and (iii) protecting against the unauthorized access to or use of such nonpublic personal information. These terms apply to all subcontractors employed by the Contractor who perform work under the scope of the agreement.

If the Contractor's price includes the cost of Contractor furnishing any other material, equipment, supplies, or other items in connection with the Contract, the Contractor shall pay the Maryland sales tax.

#### **19. Incorporation by Reference**

The terms of this solicitation and any amendments thereto are made a part of this Contract.

#### **20. Indemnification**

The University shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

#### **21. Inspection by the University**

The University may provide for inspection, at any time, of any part of the Contractor's work, and of any of the materials, supplies or equipment which the Contractor may have on hand or in the building. The Contractor shall provide adequate cooperation with any inspector assigned by the University to permit the inspector to determine the Contractor's conformity with these specifications and the adequacy of the work being performed.

#### **22. Intellectual Property**

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

#### **23. I-9 Requirement**

Contractor warrants and represents that it is currently in compliance, and that during the term of the contract it will

remain in compliance, with the Immigration Reform and Control Act of 1986, and that it will obtain original valid employment verification documentation from all its employees on a timely basis as required by law and regulation. This requirement also applies to all subcontractors hired by Contractor.

#### **24. Insurance and Indemnification Provisions**

**a.** The Contractor shall defend, indemnify and save harmless the University System of Maryland, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the performance by the Contractor, employees or agents, of the work covered by the contract.

**b.** The Contractor shall secure, pay the premiums for, and keep in force until the expirations of the contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under the contract.

**(1)** Commercial General Liability Insurance including all extensions:

- \$2,000,000 each occurrence;
- \$2,000,000 personal injury;
- \$2,000,000 products/completed operations;
- \$2,000,000 general aggregate

**(2)** Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.

**(3)** If automotive equipment is used in the operation, automobile liability insurance of \$1,000,000 combined single limit, each accident.

**c.** Each policy for liability protection, bodily injury or property damage must specifically name, on its face, Towson University, as an additional named insured as respects operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items b(1) b(4) above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

**d.** Each insurance policy shall contain the following endorsements: "It is understood and agreed that the Insurance Company shall notify in writing procurement officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the procurement officer. With the exception of Workmen's Compensation, upon the request of the procurement officer, a certified true copy of each policy of insurance, including the above endorsement, manually countersigned by an authorized representative of the insurance company, shall be furnished to the procurement officer. A certificate of insurance for Workmen's Compensation together with a

properly executed endorsement for cancellation notice shall also be furnished. Following the notice of contract award, the requested certificates and policies shall be delivered as directed by the procurement officer. Notices of policy changes shall be furnished to the procurement officer.

**e.** All required insurance coverages must be acquired from insurers authorized to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

#### **25. 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.

#### **26. Local Conditions Covering Work**

The Contractor shall cooperate with those in authority on the premises to prevent the entrance and exit of all workmen and/or others whose presence is forbidden or undesirable and in bringing, storing or removal of all materials and equipment, to observe all rules and regulations in force on the grounds, to avoid unnecessary dust or accumulated debris or the undue interference with the convenience, sanitation or routine of the University and to prevent the loss of, or damage to the property of the University and/or its employees. The Contractor shall repair any and all damage he may cause to the building or property, to the full satisfaction of the University.

#### **27. Mandated Contractor Reporting of Suspected Child Abuse & Neglect**

Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – Policy on the Reporting of Suspected Child Abuse & Neglect, as well as the University Procedures for Reporting Suspected Child Abuse and Neglect. The above-referenced USM/University Policy and Procedures are available in full at the following link: <https://www.towson.edu/about/administration/policies/documents/policies/06-01-50-policy-on-the-reporting-of-suspected-child-abuse-and-neglect.pdf>, and are incorporated herein. The University reserves the right to terminate the contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of the University, termination is necessary to protect the safety and welfare of children who come into contact with the University community.

#### **28. Maryland Law Prevails**

The contract shall be governed by the laws of the State of Maryland. The parties agree that exclusive jurisdiction shall reside with the state and federal courts in the State of Maryland.

### **29. Non-Hiring of Employees**

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

### **30. Non-Discrimination**

The Contractor will comply with all applicable Federal and State laws, rules and regulations involving non-discrimination on the basis of race, color, creed, religion, national origin, age, sex, political affiliation, marital status, veteran status, condition of disability, or other non-merit factor. In addition, Towson University's policies, programs, and activities comply with federal and state laws and University System of Maryland regulations prohibiting discrimination on the basis of race, color, religion, age, national origin, sex, disability, and sexual orientation. Provisions for reasonable accommodations shall be made by the Contractor for handicapped applicants and qualified handicapped individuals.

### **31. Non-Visual Access**

The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the costs, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent.

For purposes of this section, the phrase "equivalent access" means that the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

### **32. Ownership of Documents and Materials**

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of the contract shall at anytime

during the performance of the services be made available to the University upon request by the University and shall become and remain the exclusive property of the University upon termination or completion of the services. The University shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by the contract. The University shall be the owner for purposes of copyright, patent or trademark registration.

### **33. Patents, Copyrights and Trade Secrets**

**a.** If the Contractor furnishes any design, device, material, process or other item which is covered by a patent or copyright or which is proprietary to or a trade secret of another, Contractor shall obtain the necessary permission or license to use such item.

**b.** Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorneys' fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph c.

**c.** If any products furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

### **34. Payment Bond**

A payment bond is required for all construction contracts in excess of \$100,000 in the amount equal to at least 100 percent of the contract price. The payment bond shall be delivered by the contractor to the State not later than the time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder.

The required payment bond shall be in the State of Maryland form in effect at the time the contract is executed per COMAR 21.07.02.10B.

### **35. Performance Bond**

A performance bond is required for all construction contracts in excess of \$100,000 in the amount equal to at least 100 percent of the contract price. The performance bond shall be delivered by the contractor to the University not 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 may be made to the next lowest responsive and responsible bidder.

The required performance bond shall be in the State of Maryland form in effect at the time the contract is executed per COMAR 21.07.02.10A.

### **36. Payment of State Obligations**

Payments to the Contractor pursuant to this contract shall be made no later than 30 days after the University's receipt of a proper invoice from the Contractor. Charges of 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.

### **37. Policies and Procedures**

The USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

### **38. Responsibility of Contractor**

**a.** The Contractor shall perform the services with that standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar to the services hereunder.

**b.** Notwithstanding any review, approval, acceptance or payment for the services by the University, the Contractor shall be responsible for professional and technical accuracy of its work, design drawings, specifications and other materials furnished by the Contractor under the contract.

### **39. Prompt Payment of Subcontractors**

**a.** This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland. References to "undisputed amount", "prime contractor", "contractor" and "subcontractor" have the meanings stated in Section 6.2 a-d herein have the meanings state in COMAR 21.10.08.01.

**b.** A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 calendar days after the contractor receives a progress payment or final payment for work under this contract.

**c.** If a contractor fails to make payment within the period prescribed in b., a subcontractor may request a remedy in accordance with COMAR 21.10.08.

**d.** A contractor shall include in its subcontracts for work under the contract, wording that incorporates the provisions, duties, and obligations of 6.1 a-d: State Finance and Procurement Article, §15-226, Annotated Code of Maryland; and COMAR 21.10.08.

### **40. Responsibility for Claims and Liability**

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under the contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the University, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the services of the Contractor under the contract.

### **41. Responsibility for Damage**

**a.** The Contractor shall repair and restore to its original condition any equipment, materials or surfaces damaged by its operations.

**b.** The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies, and equipment, and to the personal property of its employees while they are in the building.

**c.** The Contractor shall be solely responsible for any damage to the building or its contents for any loss or damage to any property belonging to the University or the University employees when such loss or damage may be attributable to their actions or negligence or the actions or negligence of their employees.

### **42. Retainage**

**a.** This section shall apply if the contractor has furnished 100 percent payment security and 100 percent performance security. The contractor and each subcontractor at any tier shall incorporate the mandatory provisions outlined below in paragraphs b. through d. of this section, into each subcontract for work related to this contract.

**b.** The contractor may not retain from any payment due a subcontractor a percent of the payment greater than the percent for retainage specified in the contract.

**c.** A subcontractor at any tier may not retain from any payment due a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the subcontractor.

**d.** A contractor and a subcontractor are not prohibited, by this section from withholding an amount in addition to retainage if the contractor or subcontractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding an additional amount.

### **43. Retention of Records**

The Contractor shall retain and maintain all records and documents relating to the contract for a minimum period of four years after payment by the University of the final invoice and shall make them available for inspection and audit by the State of Maryland.

### **44. Set-Off**



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

#### **45. Site Investigation**

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

#### **46. Software Contracts:**

As specifically provided by § 21-104, Commercial Law Article, Annotated Code of Maryland, the parties agree that this Agreement shall not be governed by the Uniform Computer Information Transactions Act (UCITA), Title 21 of the Commercial Law Article of the Annotated Code of Maryland, as amended from time to time. This Agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

Contractor agrees that as delivered to buyer, the software does not contain any program code, virus, worm, trap door, back door, timer or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically upon the occurrence of selected conditions, or manually on command of Contractor.

#### **47. Specifications**

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations and to the specifications contained in the solicitation. No asbestos, lead,

or PCB-containing materials (0%) are to be utilized/installed on campus unless prior written approval has been received from the University's Department of Environmental Health & Safety (410-704-2949).

#### **48. Subcontracting or Assignment**

The benefits and obligations hereunder shall take effect and be binding upon the parties hereto and neither the contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the University.

#### **49. Suspension of Work**

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 University.

#### **50. 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 provided upon request. Where a Contractor is required to furnish and install material in the construction of improvement to real property in performance of the Contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

#### **51. Termination of Contract for Default**

If the Contractor fails to fulfill its obligation under the contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the Contractor shall, at the University's option, become the University's property. The University 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 the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. The term "damages" as used in this paragraph may include attorney's fees and litigation costs. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

#### **52. Termination of Contract for Convenience**

The performance of work under the contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with the 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 which 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 USM Procurement Policies and Procedures.

### **53. Termination of Multi-Year Contracts**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the contract succeeding the first fiscal period, the contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in the 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 will notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

### **54. Truth-In-Negotiation Certification**

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

- a. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;
- b. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and
- c. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs."

### **55. University Access to Site**

Appropriate institution officers and employees shall retain access to all institution premises, at all times, for the purpose of campus health or safety. Contractor may have access to the work area during normal business hours during the term of this Agreement and at other times as agreed upon by the Parties.

### **56. Use of Contractor's Forms Not Binding on State**

- a. Except as provided in b., the use or execution by the State of any forms, orders, agreements, or other documents

of any kind, other than the contract documents, used pursuant to or in the administration of any contract awarded by the State to Contractor, shall not bind the State to any of the terms and conditions contained therein except those provisions:

- (1) generally describing, for the purposes of ordering: Equipment or services to be provided, locations, quantities, delivery or installation dates, and, to the extent consistent with the contract documents, prices; and

- (2) not otherwise inconsistent with the contract documents.

b. Any such form, order, agreement or other document shall not vary, modify, or amend the terms and provisions of the contract documents, notwithstanding any provision to the contrary in such document, unless all of the following conditions are met:

- (1) the document expressly refers to the particular document and provision of the contract documents being modified and plainly and conspicuously identifies any modification thereto as a modification:

- (2) the document is executed on behalf of the State by the procurement officer; and

- (3) execution of the document is approved by the procurement authority whose approval is required by law.

### **57. Variations in Estimated Quantities**

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (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 one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

**A. AUTHORITY**

**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. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

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

**C. AFFIRMATION REGARDING OTHER CONVICTIONS RETAINED**

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract;  
or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

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

**D. 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).



**E. 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 (indicate reasons why the affirmations cannot be given without qualification):

**F. 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.

**G. 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.

**H. CERTIFICATION OF TAX PAYMENT**

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

**I. 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 making of the Contract.

**J. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

- (1) The undersigned bidder or offeror certifies that, in accordance with State Finance & Procurement Article, §17-705:
  - (i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and
  - (ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.
  
- (2) The undersigned bidder or offeror is unable to make the above certification regarding its investment activities in Iran due to the following activities:

**K. ACKNOWLEDGEMENT**

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

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

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**PRINT NAME OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**TITLE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

**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 OF CORPORATION REGISTRATION AND TAX PAYMENT OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:** The business named above is a (X applicable items):

- (1)  Corporation  domestic (i.e., organized in Maryland) or  foreign;
- (2)  Limited Liability Co.  domestic or  foreign;
- (3)  Partnership  domestic  foreign;
- (4)  Statutory Trust  domestic or  foreign;
- (5)  Sole Proprietorship

and is registered or qualified as required under Maryland law.

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

Name & Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

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

Name & Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:** I am aware of, and the above business will comply with, the provisions of 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.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:** I am aware of, and the above business will comply with, Election Law Article, §§14-101 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 valued at \$200,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

## **E. DRUG AND ALCOHOL FREE WORKPLACE**

### **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's 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's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §(2)(b), above;
  - (h) Notify its employees in the statement required by §(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 §(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §(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 §(2)(a) through (j), above.

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

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

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

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

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE & AFFIANT** \_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**PRINT NAME OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**TITLE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

D-1A  
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT  
& MBE PARTICIPATION SCHEDULE

**PART 1 - INSTRUCTIONS**

*PLEASE READ BEFORE COMPLETING THIS DOCUMENT*

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall

MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples. [http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the



public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

*Example for illustrative purposes of applying the 60% rule:*

*Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%*

***Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%***

***3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.***

- ✓ **Manufacturer:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
  - ✓ **Broker:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
  - ✓ **Furnish and Install and other Services:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.
9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

*Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.*

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).



11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

**Subgoals (if applicable)**

Total African American MBE Participation:	_____	%
Total Asian American MBE Participation:	_____	%
Total Hispanic American MBE Participation:	_____	%
Total Women-Owned MBE Participation:	_____	%

**Overall Goal**

Total MBE Participation (include all categories):	<b>15</b>	%
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**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &  
MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

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

1. **MBE Participation (PLEASE CHECK ONLY ONE)**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_\_ percent and all of the following subgoals:

- \_\_\_\_\_ percent for African American-owned MBE firms
- \_\_\_\_\_ percent for Hispanic American-owned MBE firms
- \_\_\_\_\_ percent for Asian American-owned MBE firms
- \_\_\_\_\_ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

**OR**

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

### **Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

### **Information Provided to MBE firms**

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

## PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. MBE PRIMES: PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

### SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)  <input type="checkbox"/> Manufacturer (count 100%)  <input type="checkbox"/> Broker (count reasonable fee/commission only)  <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) _____%</b></p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b>          Total percentage of Supplies/Products ___% x 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) _____%</b></p> <p>Description of the work to be performed with MBE prime's own forces:          _____          _____</p>
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products_% X 60% =_%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)____%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products_% X 60% =_%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)____%</p> <p>Description of the work to be performed: _____ _____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_%</p> <p><b>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products___% X 60% =___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)___%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products_% X 60% =_%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b>___%</p> <p>Description of the work to be performed: _____ _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED



**PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## D-1B WAIVER GUIDANCE

### GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### I. Definitions

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether the Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect the Offeror to take if the Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

#### II. Types of Actions Agency will Consider

The Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror's Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

##### A. Identify Proposal Items as Work for MBE Firms

###### 1. Identified Items of Work in Procurements

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

###### 2. Identified Items of Work by Offerors

- (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

**B. Identify MBE Firms to Solicit**

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:

- (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
- (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
- (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.

3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

- (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
- (b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

- (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

#### **D. Negotiate with Interested MBE Firms**

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
  - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

#### **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### III. Other Considerations

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether the Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

### IV. Documenting Good Faith Efforts

At a minimum, the Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

#### A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

#### B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

#### C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

#### D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**D-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Minority firm)  
located at \_\_\_\_\_  
(Number) (Street)  
\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_  
(Signature of Minority Firm's MBE Representative) (Title) (Date)

\_\_\_\_\_  
(MDOT Certification #) (Telephone #)

\*\*\*\*\*

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
(Signature of Prime Contractor) (Title) (Date)



**D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE\_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company:

\_\_\_\_\_  
Company Name (please print or type)

By:

\_\_\_\_\_  
Signature of Authorized Representative

Printed Name:

\_\_\_\_\_  
Printed Name

Title:

\_\_\_\_\_  
Title

Date:

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
Company Address

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST  
PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror’s responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Offeror normally perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why not.</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST  
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_\_ OF \_\_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (**Attachment D-1B - Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

<b>Name of Identified MBE Firm &amp; MBE Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Rec'd</b>	<b>Quote Used</b>	<b>Reason Quote Rejected</b>
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE\_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT NUMBER:</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

This form must be completed if Part 1 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/ section number from Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

**D- 2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

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

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

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4. **Please Check One:**

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

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5. **Please Check One:**

- Offeror did attend the pre-Proposal conference.
- No pre -Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

---

Company Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address



**D-3A**  
**CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION**

**INSTRUCTIONS:**

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State’s intent to award the Contract. Provide a copy to the Prime Contractor.

***IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.***

**SECTION A**

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_% of the Total Contract Value for the following products/services:

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

The Contractor and certified MBE each acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. The Contractor and certified MBE each solemnly affirms under the penalties of perjury that: (i) the information provided in this Certified MBE Subcontractor Participation Certification is true to the best of its knowledge, information and belief, and (ii) it has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a Contractor may not identify a certified MBE in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the MBE to identify the MBE in its Bid/Proposal;
- (2) fail to notify the MBE before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the MBE in the performance of the Contract; or
- (4) pay the MBE solely for the use of its name in the Bid/Proposal.

**SECTION B – Prime Contractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

Prime Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION C – Certified MBE Subcontractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

MBE Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION D**

*This completed form is due to the Procurement Officer on or before:* \_\_\_\_\_

Solicitation #: \_\_\_\_\_ Solicitation Title: \_\_\_\_\_

Agency/Dept.: \_\_\_\_\_ Procurement Officer: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

**D-3B**  
**MBE PRIME PROJECT PARTICIPATION CERTIFICATION**

Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_\_% of the Total Contract Amount for performing the following goods and services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE Prime Contractor**

Company: \_\_\_\_\_

*Company Name (please print or type)*

FEIN: \_\_\_\_\_

*Federal Identification Number*

Company Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*Signature of Authorized Representative*

Date: \_\_\_\_\_

**D-4A**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<b>Invoice #</b>	<b>Amount</b>	
			<b>Invoice #</b>
			<b>Amount</b>
1.			1.
2.			2.
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b>		<b>Total Dollars Unpaid: \$</b>	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Towson University  
Procurement Department  
8000 York Road  
Towson, MD 21252  
[MBE@towson.edu](mailto:MBE@towson.edu)  
PH: (410) 704-2171

Prime Contractor Signature \_\_\_\_\_ Date: \_\_\_\_\_

**D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor:	Contract #:
Certification Number:	Contracting Unit:
Report #:	Contract Amount:
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:
<b>MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	
	Project Begin Date:
	Project End Date:

Contact Person:			
Address:			
City:		State:	
Phone:		FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Towson University  
 Procurement Department  
 8000 York Road  
 Towson, MD 21252  
[MBE@towson.edu](mailto:MBE@towson.edu)  
 PH: (410) 704-2171

Prime Contractor Signature \_\_\_\_\_ Date: \_\_\_\_\_

**D-5**  
**Minority Business Enterprise Participation -**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:		State:		ZIP:	
Phone:		FAX:		E-mail:	
<b>Subcontractor Services Provided:</b>					
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
	<b>Invoice Amount</b>	<b>Date</b>		<b>Invoice Amount</b>	<b>Date</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		
Prime Contractor:			Contract Person:		

**Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):**

Towson University  
 Procurement Department  
 8000 York Road  
 Towson, MD 21252  
[MBE@towson.edu](mailto:MBE@towson.edu)  
 PH: (410) 704-2171

Prime Contractor Signature \_\_\_\_\_ Date: \_\_\_\_\_



This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand and \_\_\_\_\_, by and between \_\_\_\_\_, herein called "Contractor" and Towson University, herein called "University." Witnesseth, that the Contractor and the University, for the consideration here mentioned agree as follows:

**Article 1. Scope of Contract** – The Contractor shall furnish all materials and perform all of the work described in the Contract Documents, and shall comply with all of the terms and conditions of the Contract Documents, all of which are made a part hereof and are referred to herein as "the Contract."

**Article 2. Contract Documents** – The Contract between the parties is set forth in the Contract Documents which consist of the following, listed in their order of precedence:

- A. This Contract,
- B. Towson University – Request for Proposal, for the Procurement of \_\_\_\_\_, Towson University, RFP No. \_\_\_\_\_ including all attachments, exhibits, and addenda, and subsequent Purchase Order, and
- C. Contractor's Proposal dated \_\_\_\_\_, submitted in response to the RFP (hereinafter referred to as the "Proposal").

In the event of a conflict between the terms and conditions of any of the Contract Documents, the controlling terms and conditions shall be in the above listed order of precedence.

**Article 3. Services** – The Contractor's performance under this Contract shall be in accordance with the requirements generally set forth in the RFP and specifically described in Section V., Specifications and as set forth in the Contractor's Technical Proposal.

**Article 4. Term of Contract** – The term of the contract shall be one year from the date that the University provides the Contractor with a Notice to Proceed. The University shall have the option to exercise four annual renewal options, said options to be exercised at the sole discretion of the University. Should the University elect to renew the contract, all prices, terms and conditions will remain in effect.

**Article 5. Contract Price** – The University shall pay the Contractors as follows:

Total Project Cost                   \$ \_\_\_\_\_

**Article 6. Payment of State Obligations** – Contractor will be paid for services rendered in accordance with the terms and conditions of the Contract Documents and upon submission of proper invoices submitted to the Towson University, Accounts Payable Office. The Contractor's Federal Identification Number and the University's Purchase Order number must be included on all invoices. Towson University is exempt from the payment of taxes and shall provide the Contractor with a copy of tax-exempt certificate upon request.

Electronic funds will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

**Article 7. Limitation of Liability** – The University shall not be liable for any indirect, special or consequential damages, such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided in the Contract.

**Article 8. Assignment** – University may assign this Contract with Contractor's written consent, which shall not be unreasonably withheld.

**Article 9. Entire Agreement** – This Contract, including all Contract Documents, constitutes the entire agreement between the University and the Contractor. No waiver, modification or amendment of any of the terms or conditions hereof shall be effective unless set forth in writing and duly signed by the Contractor and the University.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized officer, agents or official on the day and year first above written.

**CONTRACTOR**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Corporate Officer or Authorized Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

**TOWSON UNIVERSITY**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

Company Name: \_\_\_\_\_

Date of Incorporation: \_\_\_\_\_ State of Incorporation: \_\_\_\_\_

Type of Work Performed:

Number of Years in Business: \_\_\_\_\_

Other or former names under which your organization has operated: \_\_\_\_\_

Type of Organization (e.g., Corp., Partnership, Individual, Joint Venture): \_\_\_\_\_

Name of Principal(s) and Title(s):

Brief History of the Company:

Total Number of Employees: \_\_\_\_\_

Number of Field Employees (Excluding Supervisory): \_\_\_\_\_

Number of Field Supervisory Personnel: \_\_\_\_\_

Number of Office Personnel (Excluding Supervisory): \_\_\_\_\_

Number of Office Supervisory Personnel: \_\_\_\_\_

Bonding Co.: \_\_\_\_\_ Bonding Capacity: \_\_\_\_\_

Proposer: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Dollar Size: \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Client/Customer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Description of the Project:

Similarities Between this Project and TU Project:

Proposer: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Dollar Size: \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Client/Customer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Description of the Project:

Similarities Between this Project and TU Project:

Proposer: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Dollar Size: \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Client/Customer: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Description of the Project:

Similarities Between this Project and TU Project:

Name of Bidder (Company): \_\_\_\_\_

Solicitation Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Due Date: \_\_\_\_\_

**Acknowledgement**

**I hereby acknowledge receipt of the following addenda which have been issued regarding the above referenced solicitation:**

Addendum #1, issue date: \_\_\_\_\_

Addendum #2, issue date: \_\_\_\_\_

Addendum #3, issue date: \_\_\_\_\_

Addendum #4, issue date: \_\_\_\_\_

Addendum #5, issue date: \_\_\_\_\_

Addendum #6, issue date: \_\_\_\_\_

Addendum #7, issue date: \_\_\_\_\_

Addendum #8, issue date: \_\_\_\_\_

Addendum #9, issue date: \_\_\_\_\_

Addendum #10, issue date: \_\_\_\_\_

Addendum #11, issue date: \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**PRINTED NAME**

\_\_\_\_\_  
**TITLE**



Project Name: \_\_\_\_\_

Project No.: \_\_\_\_\_

Bidder/Offeror Name: \_\_\_\_\_

Key Personnel Name: \_\_\_\_\_

Proposed Position Assigned: \_\_\_\_\_

**1. Educational Background**

Institution	Degree/Diploma/Certification	Major (if any) & Date of Degree

**2. Employment History**

If key personnel have more than three (3) previous employers, provide complete employment history via supplemental page(s) attached to this form.

Employer	Dates of Employment (from/to)	Position Held

**3. Project References**

Furnish reference data for project owners/clients for specific projects to which key personnel were assigned. References from projects listed in §5 of this Exhibit L are preferred.

Contact Person	Company Name	Telephone & Email
Description of Project		

Contact Person	Company Name	Telephone & Email
Description of Project		

Contact Person	Company Name	Telephone & Email
Description of Project		

**4. Achievements/Other Notations** (Optional):

**5. Similar Project/Contract Experience**

List at least three (3) prior projects.

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name: \_\_\_\_\_

Project No.: \_\_\_\_\_

Bidder/Offeror Name: \_\_\_\_\_

Key Personnel Name: \_\_\_\_\_

Proposed Position Assigned: \_\_\_\_\_

**1. Educational Background**

Institution	Degree/Diploma/Certification	Major (if any) & Date of Degree

**2. Employment History**

If key personnel have more than three (3) previous employers, provide complete employment history via supplemental page(s) attached to this form.

Employer	Dates of Employment (from/to)	Position Held

**3. Project References**

Furnish reference data for project owners/clients for specific projects to which key personnel were assigned. References from projects listed in §5 of this Exhibit L are preferred.

Contact Person	Company Name	Telephone & Email
Description of Project		

Contact Person	Company Name	Telephone & Email
Description of Project		

Contact Person	Company Name	Telephone & Email
Description of Project		

**4. Achievements/Other Notations** (Optional):

**5. Similar Project/Contract Experience**

List at least three (3) prior projects.

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name	Project Value	Completion Dates (from/to)
Key Personnel Role	Client Name	Client Contact (email/phone)
Project Description		

Project Name: \_\_\_\_\_

Project No.: \_\_\_\_\_

Company/Firm/Bidder/Offeror Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

❖ I am a Certified Minority Business Enterprise:  Yes  No MDOT Certification # \_\_\_\_\_

A Pre-Bid/Proposal Conference will be held on date and location identified in the Key Summary Information Sheet. Please return this form no less than 48 hours in advance of the conference.

I will attend the Pre-Bid/Proposal Conference:  Yes  No

❖ I intend to bid/propose for the above referenced solicitation:  Yes  No

If you will attend the Pre-Bid/Proposal Conference, please indicate the following:

❖ Number of representatives that will attend the Pre-Bid/Proposal Conference: \_\_\_\_\_

❖ Number of vehicles (for parking purposes): \_\_\_\_\_

Helpful Links:

Campus Map: <http://www.towson.edu/maps/index.html>

Parking Information: <http://www.towson.edu/parking/visitors/index.html>

ADA Accommodations: [https://www.towson.edu/maps/documents/campus-map\\_accessibility.pdf](https://www.towson.edu/maps/documents/campus-map_accessibility.pdf)

**Reference COMAR 21.05.08.08**

- A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. "Person" has the meaning state in COMAR.21.01.01.01B (64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Proposal is made.
- C. The Offeror warrants, that except as disclosed in §D, below there is no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail- attach additional sheets if necessary):
- E. The Offeror agrees that if an actual or potential of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposed to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been award and the performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

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

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**PRINT NAME OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**TITLE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

Bidder's Name: \_\_\_\_\_

Project Title: Green Roof Maintenance

Project Number: TU-2430

**Failure to properly complete each blank or any alterations/changes made to this bid form may be cause for rejection of this bid/proposal.**

Having carefully examined the solicitation documents for the above referenced project and Addenda Number(s) \_\_\_\_\_ being collectively referred to as the Contract Documents, and having received clarification on all items of conflict or upon which any doubt arose, the undersigned proposes to furnish all labor materials, and equipment required by said documents for the entire work, all in strict accordance with the Contract Documents, for the sum of:

**Total Cost of Project (Transferred from Base Bid Total below):**

**Base Bid/Basis for Award:** \_\_\_\_\_  
Words

**Base Bid/Basis for Award:** \$ \_\_\_\_\_  
Numbers

<b>MONTHLY MAINTENANCE CLEAN-UP SERVICE – CONTRACT YEAR ONE</b>				
<b>Row</b>	<b>Location</b>	<b>Cost Per Maintenance Visit</b>	<b>Number of Visits</b>	<b>Total (Cost per Maintenance Visit x Number of Visits)</b>
<b>Monthly Maintenance (April – October)</b>				
1	College of Liberal Arts	\$	7	\$
2	Health & Counseling Center at Ward & West Hall	\$	7	\$
3	West Village Commons	\$	7	\$
<b>Monthly Maintenance &amp; Roof Assessment (March &amp; November)</b>				
4	College of Liberal Arts	\$	2	\$



5	Health & Counseling Center at Ward & West Hall	\$	2	\$
6	West Village Commons	\$	2	\$
<b>Monthly Maintenance Clean-up Service Total (April-October + March &amp; November)</b>				\$

<b>ADDITIONAL SERVICES - CONTRACT YEAR ONE</b>				
Row	Position	Hourly Rate	Estimated Hours	Total (Estimated hours x Hourly Rate)
1	Supervisor	\$	100	\$
3	Laborer	\$	100	\$
4	MD Pesticide Applicator & IPM Technician	\$	40	\$
<b>Additional Services Total</b>				\$

<b>MATERIAL MARK-UP – CONTRACT YEAR ONE</b>			
Estimated Cost – Contract Year One	Material	Material Mark-Up %	Total (Estimated material cost x mark-up %)
\$7,000.00	X		

<b>Base Bid Total</b> (Monthly Maintenance Clean-up Service + Additional Services + Material Mark-Up) *Transfer this total to the Base Bid/Basis for Award under Total Cost of Project Above*	\$
--	----

If the undersigned is notified by the Procurement Officer/Representative of the acceptance of the bid within 90 days after the bid date, Contractor agrees to guarantee the completion of this work as specified in the Contract Documents.

\_\_\_\_\_ Firm License Number (if applicable) \_\_\_\_\_ Date Issued \_\_\_\_\_ Place of Issuance

**Minority Business Enterprises:** The undersigned certifies that the Bidder (check applicable box):

- Is NOT a Certified Minority Business Enterprise
- Is a Minority Business Enterprise, certified by the Maryland Department of Transportation, and assigned the following certification number: \_\_\_\_\_.

The undersigned affirms, and it is a condition precedent to acceptance of this bid, that the bidder has not been a party to any agreement to bid a fixed or uniform price.

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/Fax No.: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Federal Tax ID or Social Security No.: \_\_\_\_\_

Signature of Officer or Authorized Agent (Affix Corporate Seal): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

**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. I FURTHER AFFIRM THAT:** The material(s) listed below were taken from the business named above stock. The quantity claimed was actually used, and that the price, transportation and handling of the materials as are claimed represent actual cost. (If additional space for materials is required, please attach another sheet with additional materials in the format below):

Material Description	Quantity	Unit Cost	Extended Cost
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Contractor's Company Stock Subtotal			\$
Contractor's Company Stock Subtotal + Mark- Up (Include any applicable contract mark-up percentage applied)			\$
<b>Contractor's Company Stock (Subtotal + Mark-up)</b>			<b>\$</b>

**C. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certification, or acknowledgments contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_ and executed by me for the purpose of Contractor's Company Stock cost certification remains true and correct in all respects made as of the date of this Contract Affidavit and is fully set forth herein.

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

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**PRINT NAME OF AUTHORIZED REPRESENTATIVE & AFFIANT**

\_\_\_\_\_  
**TITLE OF AUTHORIZED REPRESENTATIVE & AFFIANT**