

SOLICITATION, OFFER, AND AWARD St. Mary's College of Maryland	1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE 1
	SMC-24-41629	<input type="checkbox"/> SEALED BIDS (<i>IFB</i>) <input checked="" type="checkbox"/> NEGOTIATED (<i>RFP</i>)	January 3, 2024	OF PAGES 54

IMPORTANT – The “offer” section on page 2 of this document must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6A. CONTRACT AWARD DATE:	6B. TITLE Farthings Parking Lot Replacement Project
7. ISSUED BY St. Mary's College of Maryland 18952 E. Fisher Road St. Mary's City, MD 20686-3001		8. ADDRESS OFFER TO St. Mary's College of Maryland 18952 E. Fisher Road St. Mary's City, MD 20686-3001 Attn: Procurement Division	
A. NAME: Darry Green Procurement Officer Director of Auxiliary Ops	B. TELEPHONE NUMBER 240-895-4307 C. FAX NUMBER 240-895-4916	D. EMAIL ADDRESS dlgreen@smcm.edu	

SOLICITATION

9. Sealed offers in original and (1) complete copy for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8 until **5:00 P.M., local time, January 25, 2024**

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10 (A). RFP SCHEDULE DATES

Pre-Bid Site Visit Date: January 10, 2024 Time: 10:00 AM

RFI Questions Due Date: January 15, 2024

RFI Response Date: January 22, 2024

OFFER (Must be fully completed by Offeror)

11. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

12. DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	_____ CALENDAR DAYS %
13. ACKNOWLEDGMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
14. NAME AND ADDRESS OF OFFEROR:		15. TELEPHONE, FACSIMILE NO. AND EMAIL ADDRESS:		
		Tel No. _____		
		Fax No. _____		
		Email Address: _____		
16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>	16A. SIGNATURE		16B. DATE	
17. NAME OF WITNESS <i>(Type or print)</i>	17A. SIGNATURE		17B. DATE	
18. TAXPAYER IDENTIFICATION NUMBER:	19. STATE OF ORIGINATION <i>(If required):</i>	20. NAME AND ADDRESS OF RESIDENT AGENT IN MARYLAND <i>(If required):</i>		

Corporate Seal (If required)

AWARD (To be completed by the College)

Your offer on this solicitation is hereby accepted as to the terms listed. This award consummates the contract, which consists of (a) College solicitation including all attachments and your offer/bid, and (b) this contract award. No further contractual document is necessary.

21. ACCEPTED AS TO ITEMS NUMBERED	22. AMOUNT	23. ACCOUNTING INFO:
24. NAME OF CONTRACTING OFFICER (Type or print)		25. SIGNATURE OF CONTRACTING OFFICER
		Date: _____

COUNTERSIGNATURE IF REQUIRED

26. NAME AND TITLE OF COUNTERSIGNER (Type or Print)	27. SIGNATURE OF COUNTERSIGNER

SECTION B

PRICE SCHEDULE

Farthings Parking Lot Replacement

Base Price

Item No.	Description	Price
1	Repair and/or upgrade all areas in accordance with the Proposed Site, Erosion/Sediment Control & Landscaping Plans.	\$ _____
2	Upgrade and add new electrical and lighting throughout the parking lot. (Refer to Site Lighting Plan dated 05.02.23)	\$ _____

Total Base Price \$ _____

Add/Alternate Price

Item No.	Description	Price
3	Alternate No. 1: Widen parking lot apron interior radius by approximately 12 feet to all for buses to enter/exit at both parking lot entry points. Patch, repair and replace with matching materials.	\$ _____
4	Alternate No. 2: Add costs for replacing all parking lot perimeter and planter timbers.	\$ _____
5	Alternate No: 3: Pricing for upgrading the entire parking lot. Include all costs associated with the Base Bid except for tasks that require the replacement or repairing of the pavers. Replace the Interlocking Permeable Pavers with a product that complies with MDE's Stormwater Design Manual (COMAR 26).	\$ _____

Total Alternate Price: \$ _____

Total Schedule Price: \$ _____

[Total Schedule Price includes Base & Alternate Items 1 through 5]

SECTION C

STATEMENT OF WORK

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C.1. BACKGROUND

The mission of the Historic St. Mary's City Commission (HSMCC) is to preserve and protect the archaeological and historical record of Maryland's first colonial capital, and to appropriately develop and use this historic and scenic site for the education, enjoyment and general benefit of the public. HSMCC collaborates closely with St. Mary's College of Maryland (SMCM) in meeting these objectives. SMCM is providing project management services to HSMCC for the design and construction of the Maryland Heritage Interpretive Center (MHIC) and the renovation of the Old Statehouse Road parking lot.

The MHIC will be the principal point of welcome, orientation and entry into the St. Mary's City National Historic Landmark District, which includes Historic St. Mary's City National Historic Landmark District, which includes Historic St. Mary's City, SMCM and portions of the St. Mary's River watershed. The proposed facility will provide a year-round exhibit center that welcomes visitors and provides them with orientation to Historic St. Mary's City (HSMC). The existing parking lot adjacent to Old Statehouse road is to be renovated to address deferred maintenance issues and to become the principal parking area for visitors to MHIC.

C.2. SCOPE AND DESCRIPTION OF WORK

Contractor shall renovate and expand the Old Statehouse Road parking lot for it to become the Farthings Parking Lot in accordance with this solicitation and the attached Design Drawings (Attachment No. 1), Project Manual. (Attachment No. 2), and Paver Materials Specifications (Attachment No. 3). For the Paver Materials Specifications bidder may propose an alternate that meets or exceeds the specifications provided in Attachment No. 3.

The renovation and construction shall include, but not be limited to:

- Establishment and maintenance of SEC measures;
- Demolition of existing paving materials;
- Site preparation and grading;
- Utility installation and connections;
- Grading and other site work;
- Installation of curbs, ramps, handrails and paving materials;
- Landscaping;
- Lighting changes and upgrade;
- Striping and Signage

C.3. CODES AND STANDARDS

All state agencies, including St. Mary's College of Maryland and Historic St. Mary's City Commission shall utilize and apply the building performance standards set forth in the Maryland State Model Performance Code at COMAR 09.12.50 and the State Fire Prevention Code at COMAR 12.03.01 promulgated pursuant to Public Safety Article, Section 6-206 of the Annotated Code of Maryland as amended and effective as of the date of design for all construction, alteration, remodeling and renovations of all buildings that are owned, leased, operated or controlled by the State.

The following codes will also be applied:

- International Building Code (IBC) 2018 with the Department of Housing and Community Development

- (DHCD) modifications; National Electrical Code (NEC) 2020;
- Maryland Accessibility Code (MAC) COMAR 09.12.53;
 - Maryland State Fire Prevention Code, COMAR 29.06.01 including National Fire Protection Association – NFPA 101;
 - Life Safety Code 2018 with State Fire Marshal Modifications;
 - Sediment Control and Storm Water Management: Comply with the latest regulations of the Maryland Department of Environment (MOE Article Section 4-10 through 4-109 of the Annotated Code of Maryland and COMAR 26.09.01; 08.05.01 and 08.05.05). Also comply with requirements of the Maryland Critical Areas Commission (COMAR 08.05.07);
 - Historic Lands: Annotated Code of Maryland Article 838 paragraphs 5-617 and 5-618;
 - National Park Service – CFR 501 C-3-Federal Standards for the curation of cultural property.

As a State-owned project on state land, the project is not subject to the jurisdiction of St. Mary’s County; however, cooperation with the Ridge Fire Department is mandatory. Adherence to the directives of the Maryland Department of the Environment and the Critical Area Commission are mandatory.

C.4. INSPECTIONS, TESTING AND UTILITY CONNECTIONS

Contractor shall engage Middle Department Inspection Agency (MDIA) to inspect all electrical work on the project, and shall assure the Work conforms with code and shall correct deficiencies observed by MDIA inspectors.

Contractor shall engage a third-party testing agency for all required soils and other structural testing, inclusive but not limited to, soil compaction and concrete strength. Reports shall be submitted to the Architect and Owner. Materials tested which do not meet the specifications shall be replaced by the Contractor at its expense.

Contractor shall collaborate with Southern Maryland Electrical Cooperative (SMECO) for electrical utility connections and shall conform to its requirements for new service connection, if necessary. Contractor shall make changes to the Work required to respond to MDIA inspector’s report and to meet required codes.

Contractor shall cooperate with the inspector for Maryland Department of the Environment regarding sediment and erosion control measures, and shall report all breaches of containment immediately.

C.5. ACCESS TO PARKING AND HSMC FACILITIES

.1 Throughout the course of construction, Contractor shall plan and execute the work in such a manner as to permit pedestrian access to the entrance to the HSMC exhibit area, “Farthings Ordinary”, restrooms and Enzo Café, or shall provide alternative, safe and accessible pathways for visitors to walk to those locations from the available parking areas.

.2 Contractor shall phase and organize the Work so that HSMC may utilize no less than 20 parking spaces throughout the renovation, the location of those spaces may vary over the course of construction. Contractor shall provide signage indication the available parking spaces.

.3 Contractor's personnel may not park in the 20 HSMC-designated parking spaces. A nearby area, suitable for Contractor personnel parking will be identified.

.4 Contractor and HSMC shall identify and coordinate use of a "laydown" areas adjacent to the parking lot.

(End of Statement of Work)

SECTION D

CONTRACT ADMINISTRATION DATA

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D.1 PERIOD OF PERFORMANCE

Performance under this contract commences on date of award through receipt and acceptance of item(s) identified in the Section B (Supplies or Services and Price/Cost). The completion date for all construction services under this contract shall be no later than **August 30, 2024** without delay or deviation from the SMCM approved scheduled and in accordance with Section C - Statement of Work & Section E – Construction Liquidated Damages

D.2 IDENTIFICATION OF CONTRACT DELIVERABLES

Unless otherwise specified, all documents prepared and submitted by the Contractor for the College under this contract shall include the following information on the cover page of each document:

- (a) Name and business address of the contractor;
- (b) Contract Number
- (c) Point of Contact
- (d) Date of transmittal

D.3 NOTICES

All notices to the College shall be sent by first class mail to:

Mr. Darry Green
Procurement Officer
St. Mary's College of Maryland
18952 E. Fisher Road
St. Mary's City, MD 20686

Notice as required under this Agreement shall be sent via first class mail.

D.4 TAX EXEMPTION

The College is generally exempt from federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where the contractor is required to furnish and install materials in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply. Tax exemption numbers for St. Mary's College of Maryland are:

Maryland State Tax Exempt No. 3000126-8
District of Columbia Tax Exempt No. 9199-79411-01

D.5 PROCUREMENT OFFICER

Upon award of a contract the College shall designate someone to serve as Procurement Officer for this Agreement. All contact between the College and Contractor regarding all matters relative to this Agreement after award shall be coordinated through the Procurement Officer.

D.6 CHANGES

The College retains the unilateral right to require changes in the scope of services so long as the changes are within the general scope of work to be performed hereunder.

D.7 MODIFICATIONS

Except as provided in D.7 “Changes,” this Agreement may be amended only as mutually agreed to by the College and Contractor in writing. Except for the specific provision of the Agreement which is modified, the Agreement remains in full force and effect after modification, and is subject to the same laws, obligations, conditions, provisions, rules, and regulations, as it was before the modification.

D.8 CONTRACTOR’S INVOICES

To facilitate payment invoices shall be forwarded to the College in triplicate and shall contain the following information, Contract Number, Purchase Order Number and Contractors Federal ID and any other information specified by the Procurement Officer. Each contract line item number (CLIN) will have assigned to it a Purchase Order Number. Invoices **MUST** show the correct Purchase Order number for the item(s) being billed. Failure to provide proper purchase order number will cause delays in the payment process and is cause for rejection of invoice. Invoices shall be sent to:

Accounts Payable
St. Mary's College of Maryland
47645 College Drive
St. Mary's City, MD 20686-3001
Phone: (240) 895-4238 or 4308
Fax No. (240) 895-4916

All payment under this Contract shall be made via Electronic Fund Transfers (EFT).

D.9 PAYMENT OF STATE OBLIGATIONS

Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State’s receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State’s payment of the amount on which the interest accrued: and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st. day after the College receives the proper invoice; or

(2) On any amount representing unpaid interest.

Charges for late payment of invoices are authorized only 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.

(End of Section D)

SECTION E
SPECIAL CONTRACT REQUIREMENTS

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E.1 MINORITY BUSINESS PARTICIPATION

.1 Establishment of Goal and Subgoals:

An overall MBE subcontractor participation goal of **MBE goal percentage 13%** of the total contract dollar amount has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- 3% for African-American MBEs,
- 0% for Asian-American MBEs,
- 0% for Hispanic-American MBEs, and
- 10% for Woman-Owned MBEs.

Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

.2 MBE Attachments 1 to 5. The following Minority Business Enterprise participation instruction and forms are provided to assist Bidders/Offerors:

MBE Attachment -1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (MUST BE SUBMITTED WITH BID/PROPOSAL)
MBE Attachment -1B	Waiver Guidance
MBE Attachment -1C	Good Faith Efforts Documentation to Support Waiver Request
MBE Attachment -2	Outreach Efforts Compliance Statement
MBE Attachment -3A	MBE Subcontractor Project Participation Certification
MBE Attachment -3B	MBE Prime Project Participation Certification
MBE Attachment -4A	Prime Contractor Paid/Unpaid MBE Invoice Report
MBE Attachment -4B	MBE Prime Contractor Report
MBE Attachment -5	Subcontractor/Contractor Unpaid MBE Invoice Report

.3 A Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**MBE Attachment No. _1A**) whereby:

(a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

(b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal

submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

(c) A Bidder/Offeror requesting a waiver should review Attachment No. _1B (Waiver Guidance) and _1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request. ***If a Bidder/Offeror fails to submit a completed MBE Attachment No. _1A with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible to being selected for award.***

.4 Bidders/Offerors are responsible for verifying that each of the MBE(s) (including any MBE primes and/or MBE primes participating in a joint venture), selected to meet the goal and any subgoals and subsequently identified in **MBE Attachment _1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

.5 Within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.

(a) Outreach Efforts Compliance Statement (**MBE Attachment No. 2**);
(b) MBE Prime/Subcontractor Project Participation Certification (**MBE Attachment No. 3A/3B**);
(c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

(d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, MD 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT certified MBEs may be used to meet the MBE subcontracting goals.**

.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the state with ongoing monitoring of MBE Participation:

- (a) **MBE Attachment No. 4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
- (b) **MBE Attachment No. 4B** (MBE Prime Contractor Report);
- (c) **MBE Attachment No. 5** (MBE) Subcontractor/Contractor Unpaid MBE Invoice Report).

.8 A Bidder/Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment No. _ -1C) and all documentation within ten (10) working days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11**.

.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit * MBE Participation Schedule (**Attachment No. 1A**), completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (See Contract Attachment 4, entitled **MBE Attachment Forms**).

.10 The Bidder/Offeror is advised that liquidated damages will apply in the event that Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions (See above Clause No. E-2_ of the Special Contract Requirements).

.11 As set forth in COMAR 21.11.03.12-I(D) when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), 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 work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (MBE Attachment No. 1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (Attachment No. _11A)) used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, 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.

.12 With respect to Contract administration, the Contractor shall:

(a) Submit by the 10th day of each month to the Agency's designated representative:

(i) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment No. -4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and

(ii) If Applicable) An MBE Prime Contractor Report (Attachment No. -4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.

(b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit by the of each month to the College's designated representative an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment No. -5) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding thirty (30) days, as well as any outstanding invoices, and the amounts of those invoices.

(c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

(d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.

(e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

E-2 MBE LIQUIDATED DAMAGES

The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, 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 pertinent MBE Contract provision. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

.1 Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): **\$6.49** 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): \$22.71 per week per MBE subcontractor.

.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling or changing the scope or 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 of 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 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: **\$22.71** per day until the undisputed amount due to the MBE subcontractor is paid.

.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

E.3 ELECTRONIC TRANSACTIONS

Electronic transactions are not permitted in connection with this Agreement unless authorized by the Contracting Officer.

E.4 DELIVERY AND ACCEPTANCE

Delivery shall be made in accordance with the solicitation specifications. The College, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The College unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The College 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 bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The College reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

E.5 WARRANTY OF COMMERCIAL ITEMS

The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

E.6 INTELLECTUAL PROPERTY

Contractor agrees to indemnify and save harmless the College, 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 this Contract.

E.7 OWNERSHIP OF DOCUMENTS, EQUIPMENT AND MATERIALS

Contractor agrees that all documents, equipment and materials including but not limited to reports, drawings, studies, specifications, estimates, maps, software, photographs, designs, graphics, mechanical, artwork and computations prepared by or for, or purchased by or for, Contractor because of this Contract shall at any time during the term of the contract be available to the College and shall become and remain the exclusive property of the College upon termination or completion of the services. The College shall have the right to use same without restriction and without compensation to Contractor other than that provided in this Contract. The College shall be the owner for purposes of copyright, patent or trademark registration, and the Contractor hereby transfers to the College any rights it may have in the work produced pursuant to this contract. Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed shall be “works made for hire” as the terms is interpreted under copyright law. To the extent that any products created under this Contract are not works made for hire, Contractor hereby transfers and assigns to the College all of its right, title and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the College in effectuating and registering any necessary assignment.

E.8 DELAYS AND EXTENSIONS OF TIME

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of

subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

E.9 CORRECTION OF ERRORS, DEFECTS AND OMISSIONS

The Contractor agrees to perform work as may be necessary to correct errors, defects and omissions in the services required under this contract, without undue delays and without cost to the College. The acceptance of the work set forth herein by the College shall not relieve the Contractor of the responsibility of subsequent correction of such errors.

E.10 SUSPENSION OF WORK

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of this work for such period of time as he may determine to be appropriate for the convenience of the College.

E.11 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:

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

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

.3 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.

E.12 TRUTH-IN-NEGOTIATION CERTIFICATION

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

.1 The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are complete and current as of the contract date;

.2 If any of the item 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 and significant sum by which the price was increased because of the defective data. The College'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

.3 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.

E.13 CONTRACTOR'S REQUIRED INSURANCE

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

.1 Commercial General Liability Insurance including all extensions:
\$1,000,000 each occurrence;
\$2,000,000 personal injury;
\$2,000,000 products/completed operations; and
\$2,000,000 general aggregated.

.2 Workmen's Compensation Insurance and Unemployment Insurance as required by the Laws of the State of Maryland.

.3 Owner's Landlord's and Tenant's and contractor's bodily injury liability insurance, with limits of not less than \$500,000 for each person and \$2,000,000 for each accident.

.4 Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.

.5 If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

.6 Food projects 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.

.2 All policies for liability protection, bodily injury or property damage must specifically name on its face, **St. Mary's College of Maryland and the State of Maryland** as additionally named insured as respects to 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 1.1 through 1.6 above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the College and to the persons or property of employees, students, faculty members, agents, officers, trustees, invitees or guests of the College.

.3 Each insurance policy shall contain the following endorsements: ***"It is understood and agreed that the Insurance Company shall notify in writing the 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 certificated 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 to the Procurement Officer within ten (10) days of award of contract. Notices of policy changes shall be furnished to the Procurement Officer.

E.14 KEY PERSONNEL

.1 Contractor shall assign to this contract the following key personnel:

Name	Title	Telephone No.
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Name(s) of Key Personal is to-be-determined.

.2 During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. Contractor shall notify the Procurement Officer within 15 calendar days after the occurrence of any of these events and provide the information required by Paragraph .3 below. After the initial 90-day period, the Contractor shall submit the information required in Paragraph .3 to the Procurement Officer at least 15 calendar days prior to making any permanent substitutions.

.3 Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutions and any additional information requested by the Procurement Officer. Proposed substitutes shall have comparable qualifications to those of the person being replaced. The Procurement Officer will notify the contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The Contract will be modified to reflect any approved changes of key personnel.

.4 The approval of substitute personnel will not be considered to be grounds for an increase in the contract price.

E.15 CONSTRUCTION LIQUIDATED DAMAGES

.1 If the contractor fails to complete the work within the contract time or fails to achieve any of the contract milestones, the contractor agrees to pay the owner \$1000.00 per day as liquidated damages to cover losses, expenses and damages of the owner for each and every day which the contractor fails to achieve completion of the milestone work or the entire project.

(End of Section E)

SECTION F

CONTRACT CLAUSES

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F.1 COLLEGE SECURITY PROVISIONS

All security requirements established by the College for its facilities shall become a part of these specifications, and it shall be the vendor's responsibility to comply with these security provisions.

F.2 COLLEGE POLICIES, RULES AND REGULATIONS

The Contractor agrees to abide by all college policies, rules and regulations in effect for all St. Mary's College of Maryland employees while working on the campus and/or dealing with any students off the campus in furtherance of the Contractor's obligations under this contract.

F.3 PRE-EXISTING REGULATIONS

The regulations set forth in SMCM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

F.4 EMPLOYEE CONDUCT

Contractor is responsible for all of its employees and their actions while on the campus and the college reserves the right to remove from the premises any employee of the Contractor who in any way acts in a manner which is considered unacceptable by the College.

F.5 ETHICS

This Contract is cancellable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any College employee or official in connection with this procurement.

F.6 RETENTION OF RECORDS

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

F.7 DISSEMINATION OF INFORMATION

Contractor may not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the College. Contractor shall indemnify the State and the College, their officials, agents and employees, from any liability that may be incurred by reason of dissemination, publication, distribution or circulation, of any information or materials pertaining to this Contract by Contractor, its agents or employees.

F.8 RESPONSIBILITY OF CONTRACTOR

Contractor shall perform the services with that standard of care, skill and diligence normally provided by a contractor in the performance of similar services. If Contractor fails to perform the services, and such failure is made known to Contractor within two years after expiration of this Agreement, it shall, if required by The College, perform at its own expense and without additional cost to the College, those

services necessary for the Correction of any deficiencies or damage resulting from Contractor's failure under this obligation, in addition to and not in substitution for any other remedy available to the College.

F.9 NON-EXCLUSIVE CONTRACT AND NO ASSURANCES OF WORK

The parties acknowledge and agree that this Contract is not exclusive and that the College may purchase the same or similar goods and services from other vendors.

F.10 BANKRUPTCY

Upon the filing of any bankruptcy proceeding by or against Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, Contractor must notify the College immediately. Upon learning of the actions herein identified, the College reserves the right at its sole discretion either to cancel the contract or to affirm the contract, and to hold contractor responsible for damages.

F.11 SUBCONTRACTING, ASSIGNMENT

Contractor may not, during the term of this Agreement or any renewals or extensions of the Agreement, assign or subcontract all or any part of the Agreement without the prior written approval of the Procurement Officer. Any approved subcontract or assignment is subject to all terms and conditions that the State deems necessary. The College is not responsible for Contractor's obligations to its subcontractors.

F.12 LICENSES AND REGISTRATION

The Contractor must be licensed as required by the laws of the State of Maryland as applicable to the performance of work under this Contract.

F.13 COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- .1 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;
- .2 It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- .3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- .4 IT shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

F.14 CONTINGENT FEE PROHIBITION

The Contractor, architect or engineer (as applicable), warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

F.15 NON-DISCRIMINATION IN EMPLOYMENT

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

F.16 COMMERCIAL NON-DISCRIMINATION CLAUSE

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination.

Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor one each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by

the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

F.17 AFFIRMATIVE ACTION NOTICE

The College is committed to the principles of equal employment opportunity. As a covered educational institution bound by Executive Order 11246; the Vietnam Era Veterans Readjustment Assistance Act of 1974; and Section 503 of the Rehabilitation Act of 1973, as amended, the College maintains an affirmative action plan and hereby states as its Policy of Affirmative Action the following:

- It will be the policy of the college to recruit, hire, train and promote persons in all job titles without regard to sex, gender identity, sexual orientation, race, color, religious creed, national origin, ethnicity, physical or mental disability, protected veteran status, or any other characteristic protected by law.
- All employment decisions shall be consistent with the principle of equal employment opportunity, and only job related qualifications will be required.
- All terms and conditions of employment will be administered without regard to an individual's sex, gender identity, sexual orientation, race, color, religious creed, national origin, ethnicity, physical or mental disability, protected veteran status, or any other characteristic protected by applicable law.

For employee placement firms: We request that you refer to the College all qualified candidates, including women, individuals of color, protected veterans, and individuals with disabilities.

F.18 NON-HIRING OF OFFICIALS AND EMPLOYEES

No official or employee of the State of Maryland as defined under Maryland General Provisions Article, §5-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and/or term of this contract and while serving as an official or employee of the State, become or be an employee of contractor or any entity that is a subcontractor on this contract.

F.19 DRUG FREE AND ALCOHOL FREE WORKPLACE

The contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace and that the Contractor shall remain in compliance throughout the term of the Contract.

F.20 CORPORATE REGISTRATION

Pursuant to 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201, before doing

any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

F.21 FINANCIAL DISCLOSURE

Contractor shall comply with the State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State and receive in the aggregate \$200,000 or more during a calendar year, shall within 30 days of the time when the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

F.22 POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

F.23 FEDERAL LOBBYING PROHIBITION

In accordance with 31 U.S. C. § 1352, The Contractor, and any subcontractors are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement, or loan. Any recipient of federal funds that received over \$100,000 in federal monies must also file a “Disclosure of Lobby Activities” from (Federal Form SF LLL). Contractor hereby specifically agrees to abide by all applicable requirements of 31 U.S.C. § 1352.

F.24 COMPLIANCE WITH ADA

Contractor shall comply with the Americans with Disabilities Act (ADA), 42, U.S.C. § § 12101 et seq. and applicable regulations. To the extent required by the ADA, Contractor’s facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Agreement conform to the ADA. Contractor shall indemnify the State in any action brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Contractor, or of Contractor’s employees, agents, or subcontractors.

F.25 LICENSES, REGISTRATION AND QUALIFICATIONS

All work performed by the Contractor shall conform to all State and local codes and ordinances and such other statutory provisions that pertain to this class of work. Such codes, rules, regulations and local ordinances are to be considered part of these specifications. The College reserves the right to require that the Contractor demonstrate that it has the skills, equipment and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project. The College has the option of requiring all personnel working on this contract to have copies of their license/registration forms on file with the Purchasing Agent at the college.

F.26 ANTI-BRIBERY

The Contractor warrants that neither it nor any of its officers, directors or partners, nor any employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

F.27 ARREARAGES

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

F.28 QUALIFICATIONS TO DO BUSINESS IN THE STATE OF MARYLAND

Any out of state entity not already registered with the Maryland State Department of Assessments and Taxation to do business in Maryland shall be required to do so prior to entering into a contract with the College.

F.29 FIXED OR UNIFORM PRICE

The Bidder affirms that it has not been a party to any agreement to bid a fixed or uniform price.

F.30 EPA COMPLIANCE

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Act of 1972, where applicable.

F.31 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 U.S. and Maryland Occupational Safety and Health Act standards.

F.32 INDEMNIFICATION

.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and, if requested, defend the State of Maryland and St. Mary's College of Maryland and their trustees, officers, employees, representatives, and agents, from any and all claims, costs, damages, expenses, liability, losses, judgments, and causes of actions (including attorney's fees, settlements made in good

faith and arbitration awards) which arise out of or result from the performance of this Contract, including any acts or omissions of the Contractor, its officers, employees, subcontractors, or agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnification which would otherwise exist as to any party or person.

.2 The College is not liable in any action of tort, contract, or otherwise for any actions of Contractor arising out of this Agreement. The college shall not assume any obligation to defend, indemnify, hold harmless, or pay any attorneys' fees, claims, costs, expenses, judgments, or settlements that may arise from or in any way be associated with the performance or operation of this Contract.

.3 The Contractor shall immediately notify the Procurement Officer by phone and in writing of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's performance of work under the Contract. The Contractor shall cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the Contractor's performance under this Contract.

F.33 DISPUTES

.1 Except as otherwise may be provided 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 Disputes clause and in accordance with SMCM Procurement Policies and Procedures, Section 8, "Protest and Appeals."

.2 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 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.

.3 Prior to filing a contract claim, the contractor shall contact the Procurement Officer and attempt, in good faith, to resolve by mutual agreement any disputes or disagreements that arise in connection with the Contract. When a dispute cannot be resolved by mutual agreement, the contractor shall submit a written contract claim to the Procurement Officer for a decision, made in consultation with the Office of the Attorney General. The claim shall be filed with the Procurement Officer within thirty (30) days of when the basis of the claim was known or should have been known, whichever is earlier.

.4 The Procurement Officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal as provided by SMCM Procurement Policies and Procedures, Section 8, "Protest and Claims" within 30 days of receipt of the decision.

.5 Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.

F.34 TERMINATION FOR DEFAULT

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

F.35 TERMINATION FOR CONVENIENCE

The performance of work under this contract may be terminated by the College in accordance with this clause in whole, or from time to time in part, whenever the College shall determine that such termination is in the best interest of the College. The College will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

F.36 SET-OFF

The State may deduct from and set off against any amounts due and payable to Contractor any back-charges, penalties, or damages sustained by the State, by virtue of any breach of this Contract by Contractor or as otherwise permitted by law. Nothing herein shall be construed to relieve Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

F.37 BID/PROPOSAL AFFIDAVIT BY CONTRACTOR

All terms and conditions of the Bid/Proposal Affidavit, attached as Section H, are made a part of this contract.

F.38 REPRESENTATION

Each party to this agreement represents and warrants to the other that it has full right, power, and authority to execute this Contract.

F.39 MARYLAND LAW PREVAILS

The provisions of this contract shall be governed by the laws of Maryland.

F.40 FIXED OR UNIFORM PRICE

The Bidder affirms that it has not been a party to any agreement to bid a fixed or uniform price.

F.41 ENTIRE AGREEMENT

This Agreement, together with the Attachments and other documents incorporated by reference, represents the complete and final understanding of the parties. No other understanding, oral or written, regarding the subject matter of this Agreement, may be deemed to exist or to bind the parties at the time of execution.

F.42 BID, PERFORMANCE AND PAYMENT BONDS

.1 Bid, Performance and Payment bonds are required when the amount of the bid, including base bid and any alternates, is in excess of \$100,000. Bid and Performance & Payment Bond Forms are provided as added Attachment No. 5 to this RFP.

.2 Bid bonds shall be in an amount equal to twenty percent (20%) of the total bid amount including base bid and any alternates and must be included with the bid package.

.3 Performance and Payment bonds shall be in the full amount of the contract price. The College will provide the contractor with copies of the Performance and Payment Bonds forms which must be executed and returned to the College within ten (10) days from date of award of contract.

.4 The premiums for the bonds shall be paid by the Contractor.

.5 At the direction of the College, the Contractor may be required to increase the amount of the bonds; for such additions the Contractor will be reimbursed by the College for the actual cost of the increased bond premium. Whenever the amount of the contractor's bonds is increased at the College's request, the college must receive proof of the increase in satisfactory form from the surety. The College will not be liable to the Contractor for any increase in bonds not requested by the College.

.6 The College may reject a bidder as being not responsible if the bidder fails to furnish performance and payment bonds from a surety which the College determines has not, in the past, responded diligently and in good faith to bond claims, if any, of the State or of subcontractors and suppliers.

.7 Should the College declare the Contractor to be in default, the Surety will be obligated to perform in accordance with the executed performance bond.

.8 If the College declares the Contractor to be in default, the surety has no right to require the College to contract with a Contractor of the surety's choosing. The surety must either (1), complete the project or cure the default or (2), allow the College to complete the project or cure or remedy the default, with the surety to remain liable to the College for excess completion costs and other damages.

.9 Performance Bonds secure, for the benefit of the College, proper performance of all obligations of the contractor to the College under the contract. Performance Bonds do not secure subcontractors or suppliers at any tier against nonpayment by the Contractor or others.

SECTION G

LIST OF ATTACHMENTS

<u>ATTACHMENT NO.</u>	<u>DESCRIPTION</u>	<u>NUMBER OF PAGES</u>
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2	Project Manual	99
3	Paver Materials Specifications	1
4	General Conditions	69
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SECTION H

BID/PROPOSAL AFFIDAVIT

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1. 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.

2. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

3. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

Act, [18 U.S.C. § 1341](#) et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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

(5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in (1)-(4) above;

(6) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland, for acts in connection with the procurement of a contract, of willfully:

(a) Falsifying, concealing, or suppressing a material fact by any scheme or device;

(b) Making a false or fraudulent statement or representation of a material fact;

(c) Using a false writing or document that contains a false or fraudulent statement of a material fact; and/or

(d) Aiding or conspiring with another person to commit an act under (a)-(c) 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; or

(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;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7206, Fraud and False Statements, or

(e) §7207, Fraudulent Returns, Statements or Other documents;

(10) Been convicted of a violation of 18 U.S.C. §286 conspiracy to Defraud the Government with Respect to Claims, 18 U.S. C. §287, False, Fictitious or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in

the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A Court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4 or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review; and

(15) 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 (1) above, except as following (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):

4. 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).

5. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to [Sections 16-101, et seq., of the State Finance and Procurement Article](#) of the Annotated Code of Maryland; and
(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

6. 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.

7. 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.

8. 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 \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

9. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity, in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

10. DRUG AND ALCOHOL-FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would

be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Notify its employees in the statement required by § J (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 § J (2) (h) (ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under § J (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 § J (2) (a)-(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in § J (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.

11. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name:

Address:

(If not applicable, so state).

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

12. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

13. CERTIFICATION REGARDING INVESTMENTS IN IRAN

.1 The undersigned certifies that, in accordance with State Finance & Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

14. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

The undersigned certifies that, it has complied with the provisions of State Finance and Procurement Article, § 14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries

as required by federal law.

15. ENVIRONMENTAL ATTRIBUTES

The undersigned certifies that any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

16. ACKNOWLEDGEMENT

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

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

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

SECTION I

**INSTRUCTIONS, CONDITIONS,
AND NOTICES TO OFFERORS**

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I.1 GENERAL INFORMATION

.1 Offerors are expected to examine the entire solicitation and all instructions. Failure to do so will be at the offeror's risk. Each offeror shall furnish the information required by the solicitation. The offeror will be held responsible for full knowledge of all information contained therein.

.2 Offerors shall be individuals, partnerships, or corporations who are regularly engaged in the business covered by these specifications and who have established a satisfactory record in the past for performance of contracts of similar character and extent, and who maintain a regular force of workmen skilled in the performance of the work the offeror undertakes to perform upon submission of his proposal. Offeror shall be qualified, competent and amply able to finance and perform the work in a proper and satisfactory manner.

I.2 SOLICITATION

This solicitation is being requested by the College for certain commodities or services, the purchase of which shall be by written contract.

.1 If an offeror objects to any of the terms and conditions of this solicitation, the offeror must identify and explain its objections before the solicitation due date. The College reserves the right to reject as non-responsive any offer that objects to any of the terms and conditions of this solicitation.

.3 This procurement is subject to the SMCM Procurement Policies in effect on the date of issue of the solicitation or the date of execution of the contract and/or purchase order. Those policies and procedures are available on line at www.smcm.edu

I.3 SITE VISIT/PRE-PROPOSAL CONFERENCE

.1 Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

I.4 TYPE OF CONTRACT

The College contemplates award of a firm fixed-price contract for the services described in Section B (SUPPLIES OR SERVICES AND PRICE/COST) and Section C (DESCRIPTION/STATEMENT OF WORK).

I.5 RESERVATION OF RIGHTS

This solicitation implies no obligation on the part of the College. The College reserves the right to increase or decrease the quantities of any commodities or services requested in the solicitation. The College reserves the right to cancel this solicitation, in whole or in part, anytime before the opening of the offers, to accept or reject any and all offers in whole or in part received as a result of this solicitation, to not make an award, to waive minor irregularities, or to negotiate with all responsible VENDORS in any manner necessary, in order to best serve the interests of the College.

I.6 INTERPRETATIONS AND AMENDMENTS

.1 Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it writing in a form of a Request for Information (RFI) no later than ten (10) calendar days after the issue date of solicitation or if required, after the pre-bid site visit. Oral explanations or instructions given before the award of a contract will not be binding. Written requests shall be in a form of a Request for Information (RFI) and transmitted via e-mail to Darry Green, Procurement Officer, dlgreen@smcm.edu. Request for Information (RFI) responses shall be returned by the Procurement Officer to the contractor within (10) to (15) business days.

.2 Any interpretations or corrections, as well as any additional modifications the Contracting Officer may desire to include, will be in the form of amendments, in writing, which will be sent on the same date to all offerors if that information is necessary in submitting offers or if the lack of it would be prejudicial to other prospective offeror, and shall become a part of any subsequent contract. The Contracting Officer reserves the right to answer only such questions as have, in his opinion, a definite bearing upon the proposals to be submitted.

.1 Offerors shall acknowledge the receipt of all amendments to the solicitation by:

- .1 Signing and returning the amendment;
- .2 Identifying the amendment number and date in the space provided for this purpose on the “Solicitation, Offer and Award Form”;
- .3 Letter, telegram, email or facsimile.

.2 The College must receive the acknowledgment by the time and at the place specified for receipt of offers.

.3 Requests for oral interpretations or any other interpretations not made by amendments will not be accepted, and any information that may possibly be gained by the offeror in that manner is gratuitous and not binding.

.4 If this solicitation is amended, all terms and conditions that are not amended remain unchanged.

I.7 VENDOR’S TERMS AND CONDITONS

Any proposed terms and conditions, including any form contracts which the Vendor proposes to use, shall be submitted by the solicitation due date as part of the offer.

I.8 WITHDRAWAL OF OFFER

Vendors may modify or withdraw offers by submitting a written modification or withdrawal that is received prior to the time and date set for the proposal due date. No withdrawal or modifications shall be accepted after the time for opening of offers.

I.9 FAILURE TO SUBMIT OFFER

Recipients of this solicitation not responding with a proposal should not return this solicitation, unless it specifies otherwise. Instead, they should advise the College by letter, postcard or email, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a proposal and does not notify the College that future solicitations are desired, the recipient's name will be removed from the College's applicable mailing list.

I.10 BID PROTEST

.1 An interested party may protest the solicitation or the award of a procurement contract. The protest must comply with SMCM Procurement Policies and Procedures, Section 8, "Protest and Claims." The protest shall be in writing and addressed to the Procurement Officer whose name and address appear on the cover sheet of these documents. The protest may be mailed to the following address:

St. Mary's College of Maryland
Attn: Procurement Officer
18952 E. Fisher Road
St. Mary's City, MD 20686

or faxed to the attention of the Procurement Officer at (240) 895-4916.

.2 Protests based on alleged improprieties which are apparent before the proposal due date shall be filed before the proposal due date. Otherwise, protests shall be filled not later than seven (7) days after the basis for protest is known, or should have been known, whichever is earlier. All protests must be received by the Procurement Officer within this time limit or they will not be accepted.

I.11 BID/PROPOSAL AFFIDAVIT

All Vendors must truthfully complete the Bid/Proposal Affidavit (Section H) form and submit it with their proposal. This Bid Affidavit will be incorporated by reference into the Contract. Therefore, it is the responsibility of the vendor to report to the college any changes in the Contract/Bid Affidavit information between the date it was submitted to the College and the effective date of the contract.

I.12 PUBLIC INFORMATION NOTICE

Offeror should give specific attention to the identification of those portions of their proposal that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Maryland public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland. Contractors must clearly identify each and every section that is deemed to be confidential, proprietary or a trade secret (it is **NOT** sufficient to preface your proposal with a proprietary statement or to use a page header or footer that arbitrarily marks **all** pages as confidential). Any individual section of the offer that is not labeled as confidential with an accompanying statement concerning the rationale for its claimed confidentiality shall be considered public information.

I.13 CONTRACTOR REFERENCES

Bidder shall provide **five (5) references** from jobs performed within the past three years which are similar in scope and size to this project. (See Bidder References Form - Attachment 5).

I.14 PROPOSAL COMPOSITION – SOURCE SELECTION PROCEDURES

.1 Proposal shall be submitted in two major subdivisions: Technical Proposal whose content and arrangement shall be as describe in the article, ‘INSTRUCTIONS FOR PREPARING THE TECHNICAL PROPOSAL’ of this section, and a Price Proposal, which shall be prepared in detail on a basis as described and set forth in the article entitled, ‘INSTRUCTIONS FOR PREPARING THE PRICE PROPOSAL’ of this section.

.2 The Technical Proposal and the Price Proposal portions of each proposal tendered by any offeror shall each be enclosed in a separate sealed package, identified on its outer surface as to content in the manner prescribed in the article entitled ‘INSTRUCTIONS TO OFFERORS’ of this section and submitted in the following number of copies:

- (1)** Technical Proposal – One original and 3 copies.
- (2)** Price Proposal – One original and 3 copies.

.3 Each offeror may submit one or more proposals; however, each proposal shall be configured as described above, shall be considered on its own merits as to the completeness of submissions, and shall not share required documentation, bonding or other requirements of submission with any other proposal submitted by the same offeror.

I.15 INSTRUCTIONS FOR PREPARING THE TECHNICAL PROPOSAL SOURCE SELECTION PROCEDURES

.1 The Technical Proposal shall consist of Experience, Management Plan, Technical, Past Performance etc. and be contained in three ring binders, binder clips, rings or other method that allows the material to be viewed and removed easily. Spiral binding is strongly discouraged.

- (1) Evaluation Factor 1 –**

I.16 INSTRUCTIONS FOR PREPARING THE PRICE PROPOSAL SOURCE SELECTION PROCEDURES

.1 Offerors are expected to examine the drawings, if any, specifications, Section B – Supplies or Services and Price/Cost pages and all instructions. Failure to do so will be at the offerors risk.

.2 Each offeror shall furnish the information required by the solicitation. The offeror(s) and a witness shall sign the offer on Page 2 of the Solicitation, Offer and Award form in blocks 16 and 17 as follows:

As an individual: Sign with the full name, address and Taxpayer Identification number.

As a Partnership: Solicitation, Offer and Award form shall be signed by such member or members of the partnership as have authority to bind the partnership; provide also the complete legal name of the partnership, the state in which the partnership was formed, the address of the partnership's principal office, partnership's Taxpayer identification number, and the address of partnership's resident agent in Maryland.

As a Corporation: An officer of the corporation shall sign his/her full name, indicate his/her title and include the complete legal name of the corporation and address of the corporation's principal office. The corporate seal shall be affixed near the signature. Provide also the state in which the corporation was incorporated, the corporation's federal tax identification number, and the name and address of the corporation's resident agent in Maryland.

Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority.

.3 For each item offered, offerors shall –

.1 Show the unit price, if required, including, unless otherwise specified, packaging, packing and preservation; and

.2 Enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule.

.4 In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject however to correction to the same extent and in the same manner as any other mistake.

.5 Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

.6 Price Proposal shall contain the following: Signed Solicitation, Offer and Award form, Section B (Supplies or Services and Price/Cost sheets, Section H (Bid/Proposal Affidavit), Certification Certificate regarding Investments in Iran, MBE Forms if required, Bid Guarantee, if required.

I.17 SUBMISSION OF OFFERS

.1 Proposals, modifications, and revisions shall be enclosed, in the quantities and manner specified in the Proposal Composition – Source Selection Procedures article of this section.

.2 Request for Proposal (RFP) responses will only be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system.

.3 Instructions on how to submit proposals electronically can be found at: <https://procurement.maryland.gov/emma-qrgs/>

.4 Refer to Vendor QRG 6 – eMMA QRG Responding to Solicitations (RFP) [5-eMMA-QRG-Responding-to-Solicitations-Double-EnvelopeRFP.pdf](#)

.5 Offerors are responsible for submitting offers and any modifications or revisions via

eMMA so as to reach the College address designated in the solicitation by the time and date specified in the solicitation. Any proposal, request for withdrawal, or modification of an offer that is not received via eMMA at the designated location by the time and date set forth in the solicitation documents will be considered late and will not be considered.

.6 Submission of the offer to the specified eMMA platform at the prescribed time and date is the sole responsibility of the offeror. At the sole discretion of the Procurement Officer, exceptions may be made only when the reason for the late proposal, late request for withdrawal or late modification of a proposal, is due to the action or inaction of the College's personnel directing the procurement activity or their employees.

.7 Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested, or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

I.18 BID COMPOSITION

.1 Bidders are expected to examine the drawings, if any, specifications, Schedule, and all instructions. Failure to do so will be at the Bidders risk.

.2 Each bidder shall furnish the information required by the solicitation. The bidder and a witness shall sign the bid on Page 2 (SOLICITATION, OFFER AND AWARD) in blocks 16 and 17 as follows:

As an individual: Sign with full name and address and Taxpayer Identification number.

As a Partnership: SOLICITATION, OFFER AND AWARD FORM shall be signed by such member or members of the partnership as have authority to bind the partnership; provide also the complete legal name of the partnership, the state in which the partnership was formed, the address of the partnership's principal office, partnership's Taxpayer identification number, and the name and address of partnership's resident agent in Maryland.

As a Corporation: An officer of the corporation shall sign his/her full name, indicate his/her title and include the complete legal name of the corporation and address of the corporation's principal office. The corporate seal shall be affixed to the form. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority.

.3 For each item bid, bidders shall-

.1 Show the unit price, if required, including, unless otherwise specified, packaging, packing, and preservation; and

.2 Enter the extended price for the quantity of each item bid in the "Amount" column of the Schedule.

.4 In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

.5 Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

.6 Bids shall contain the following: Signed Solicitation, Offer and Award form, Section B (SUPPLIES OR SERVICES AND PRICE/COST), Section H (BID/PROPOSAL AFFIDAVIT), signed Certification Regarding Investments in Iran form, Reference Sheet and MBE Form if required.

.5 The College may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or sub line items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the College even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

I-19 NOTIFICATION OF LOW BIDDER

The College will provide the notification of award results by issuance of written letter to all bidders who have submitted a proposal by the due date. Award results letter will be limited to details that include the award contract value and awardee firm name, no other details will be disclosed within the notice. Any additional information regarding your bid evaluation results must be requested in writing and will be limited to a debrief discussion of your proposal overall evaluation rating.

(End of Section I)

SECTION J

EVALUATION FACTORS FOR AWARD

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J.1 EVALUATION CRITERIA

.1 General Requirements. The evaluation criteria to be used by the College for the selection of a Contractor to perform the work specified herein are defined below. The criteria are divided into Technical and Price categories. The Technical Evaluation Criteria, when combined are significantly more important than price. However, as the difference in technical merit between the proposals becomes less significant, the relative importance of the proposed prices will increase.

.2 Technical Evaluation Criteria – The criteria to be used in assessing the quality of each proposal are listed below. For purposes of the evaluation the factors are considered equal in importance. The Technical criteria, considered together, are more important than Cost/Price.

.3 Factor 1 – Relevant Experience and Past Performance

Evaluation of the Relevant Experience and Past Performance is intended to identify those offerors who have provided evidence that he/she has successful experience with current, or recently completed contract(s) within the last five (5) years for providing services of similar nature to those contemplated in this solicitation and to institutions of similar size and nature to SMCM. The Offeror will be evaluated on the extent of successful completion of similar services, taking into consideration the degree of client satisfaction. Higher ratings/scores will be given to Offerors whose performance on similar services has exhibited the most success and client satisfaction. Proposals and Past Performance information received from customer references will be evaluated to determine whether, and the extent to which, the offeror has demonstrated a satisfactory record of conforming to contract requirements and to high standards of services provided; a satisfactory record of forecasting and controlling cost; a satisfactory record of completing contracts within budget; a satisfactory record of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, evidence of a business-like concern for the interest of the customer. In investigating the Offeror's past performance, the College will consider information submitted by the Offeror and may consider information from other sources.

.4 Factor 2 – Management Plan/Technical Approach

Evaluation of the Management Plan is intended to identify those offerors with the knowledge, expertise, experience, resources and best management practices and procedures to fulfill the requirements of the contract. Proposals will be evaluated to determine the degree to which the offeror's Management Plan offers enhanced value or lower risk to the College. In addition, proposals will be evaluated to determine whether, and the extent to which, the offeror has proposed an on-site staffing mix with satisfactory experience, including experience working on comparable projects, education, knowledge and capability to perform work requirements. Has proposed an organizational structure and management that clearly demonstrates that functions and relationships are logically and clearly defined; that on-site managers have adequate authority to effectively manage the facilities; and that adequate support is available from the home office when needed. Has provided a detailed narrative describing the proposed management systems which demonstrate that adequate methods are in place to ensure that high levels of quality and cost control will be maintained; and demonstrates adequate safety and sanitary programs are in place.

Price Proposal

Each offeror's price proposal will be evaluated to determine whether it demonstrates cost/price realism.

As noted above, the technical criteria are considered by the Contracting Officer to be significantly more important than the proposed price. However, as the difference in technical merit between proposals becomes less significant, the relative important of price will increase.

J.2 CONTRACT AWARD – SOURCE SELECTION PROCEDURES

.1 The College will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the College, cost or price and other factors, specified elsewhere in this solicitation, considered.

.2 The College may –

- .1 Reject any or all offers if such action is in the College's interest;
- .2 Accept other than the lowest offer; and
- .3 Waive informalities and minor irregularities in offers received.

.3 The College intends to evaluate proposals and award a contract without discussions with offeror. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint. The College reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary.

.4 The College may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the offer.

.5 A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the College may accept an offer (or part of an offer as provided in Paragraph .3 of this clause), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the College.

.6 The College may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub line items. Unbalanced pricing exist when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the college.

(End of Section J)