



ST. MARY'S COUNTY GOVERNMENT

INVITATION FOR BID

26-DPWT-143770

PINEY POINT LIGHTHOUSE LIVING SHORELINE

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- A - J-7 23-WQC-0003 MDE Water Quality Certification
- B - J-8 22-WL-0760_Marsh Maintenance Plan_Fully Executed
- C - J-9 State of Maryland Board of Public Works Wetlands License NO. 22-0760
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- E - J-11 St.Mary's County Pier Permit
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1. PRICE PROPOSAL

1.1. BID PROPOSAL

Distribute indirect costs between material and labor appropriately. For bid evaluation purposes only, not to be construed as meeting the requirements of the Schedule of Values for progress payments.

BASE BID PROPOSAL

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
001	All Stonework and materials required to construct three stone breakwaters and one stone spur.	1	Lump Sum		
002	Sand Fill, Grading, and Stabilization	1	Lump Sum		
003	Wetlands Plantings and Goose Exclusion Fencing and Blaze Orange Fencing.	1	Lump Sum		
004	Mobilization and Demobilization (includes all sediment control measures: Turbidity Curtain, debris removal.	1	Lump Sum		
TOTAL					

2. DESCRIPTION / SPECIFICATIONS / WORK STATEMENT

2.1. INTRODUCTION

The St. Mary's County Government (County) Department of Public Works and Transportation is soliciting bids to establish a Lump Sum Contract to construct a living shoreline project at the Piney Point Lighthouse and Museum in St. Mary's County, Maryland. The County intends to award one Contract to the lowest responsive and responsible bidder.

Solicitation documents may be downloaded from the County's eProcurement Portal (<https://procurement.opengov.com/portal/stmaryscountymd>) under its bid number.

The solicitation document identifies regulatory requirements specific to this solicitation and as defined by the terms, conditions, specifications, Contract clauses, exhibits, construction drawings, attachments, and any subsequent addendum. **If there is a conflict between federal, state and local requirements, the most stringent requirement shall govern unless a formal amendment to the solicitation or a Contract Modification is issued as clarification.** The Project shall conform to the construction specifications and drawings as included in this solicitation. Additionally, the Project shall conform to the federal, state and local requirements related to this solicitation. The solicitation and all documents incorporated herein, in conjunction with awarded bid, proposal forms, affidavits and attachments shall become a part of the Contract agreement between the Contractor and the County.

Funding for this project has been made available through the County-approved Capital Improvement Program, Project #MA2102.

No less than seven and one-half percent (7.5%) of the actual work must be performed by the bidder with their own forces. The bid shall include the designation of actual work to be performed by bidder with their own forces as shown on the Subcontractor's List in their bid submission.

2.2. PRE-BID MEETING

All interested bidders must register in advance via the County's eProcurement Portal RSVP Manager at least 90 minutes prior to the Virtual Pre-Bid Meeting, Site Visit, and Virtual Bid Opening. Firms that have registered timely will receive participation instructions. If multiple attendees will be attending the meeting, please have each individual complete the RSVP Manager process.

A Virtual Pre-Bid Meeting, to answer questions about preparing and submitting your bid will be held at 10:00 am on Wednesday, August 6, 2025. You must use confirm your attendance to the pre-bid meeting using RSVP manager at least 90 minutes before its scheduled start time.

This meeting is not mandatory, but it is an opportunity for bidders to ask questions regarding this project. Additional information, questions and answers, clarifications or changes resulting from this meeting that affects the solicitation requirements will be provided to all prospective bidders via a formal written amendment posted on OpenGov Procurement.

A Site Visit will be held at the date and time shown in the Timeline. Use RSVP Manager to confirm your attendance.

Location: 44720 Lighthouse Rd, Piney Point, MD 20674

2.3. SCOPE OF WORK

2.3.1. GENERAL

The St. Mary's County Government, Department of Public Works & Transportation is soliciting bids to establish a Lump Sum Contract to construct a living shoreline project at the Piney Point Lighthouse and Museum in St. Mary's County, Maryland.

The Work shall include all work necessary to complete the project 'ready to use' in a satisfactory manner. Contractor shall provide all plant equipment, tools, materials, labor, and incidentals necessary to complete the project within the time specified. Only new materials will be acceptable for use on the project.

2.3.2. STATEMENT OF WORK

The BASE BID consists of the following major items of work summarized below. The Contract Documents provide the full scope of the Work:

The Project will consist of all structural and non-structural elements required to complete the living shoreline project.. The Contractor shall accomplish all work, including such addition-al, extra and incidental work that may be considered necessary by the St. Mary's County Govern-ment, to complete the Project, as defined herein, in a satisfac-tory and acceptable manner. The Contractor shall furnish all plant equipment, tools, materials, labor and incidentals neces-sary to carry on the Project to satisfactory completion within the time period specified and in accordance with the solicitation documents.

Construct a living shoreline along approximately 1,065 linear feet of eroding shoreline, by barge.
Emplace three (3) stone breakwaters and one (1) stone spur:

- A. (1) 30-foot wide by 180-ft long stone breakwater
- B. (2) 30-foot wide by 160-ft long stone breakwater
- C. (3) 24-ft wide by 110-ft long

- D. (4) 30-ft wide by 100-ft long stone spur groin to extend no more than 143 ft channelward of the approximate mean high-water shoreline
- E. Backfill with approximately 9,320 cubic yards of clean sloped sand
- F. Establish approximately 15,841 square feet of high marsh habitat.

2.3.3. PROJECT SITE

The Project Site is located in the Potomac River, at 44720 Lighthouse Rd, Piney Point, St. Mary's County, Maryland. (38.1349 N; -76.529208 W) and the location is as shown on the vicinity map on the Project Drawings.

- A. The Contractor, before submitting a proposal for this Project, shall visit the construction site (either after the pre-bid meeting or on their own) and thoroughly familiarize themselves with all existing conditions.
- B. The Contractor shall satisfy themselves as to the accuracy and completeness of these Specifications and Project Drawings regarding the nature and extent of all Work described.
- C. Because of the proximity of improved properties, the Contractor shall exercise extreme care in their construction operations, and coordinate with the adjacent property owners. All work must be kept within the "Limit of Disturbance" as shown on the Project Drawings as LOD (Attachment J-14).
- D. The Contractor shall use the horizontal and vertical survey control points shown on the Contract Drawings to layout the lines of work, stakeout the location of all proposed structures, and verify the levels of all construction elements.
- E. Should there be any discrepancies between Drawings, and/or field conditions after bidding and prior to the beginning of Work, the Contractor shall bring such discrepancies to the attention of the applicable COTR, at the Work pre-construction conference.

2.4. GENERAL REQUIREMENTS

In addition to the requirements contained herein, material specifications that are acceptable for work to be performed include those of the Maryland Department of Transportation, Maryland State Highway Administration (SHA), entitled "Standard Specifications for Construction and Materials", current revision, and as modified by the Solicitation/Contract. The SHA documents are revised from time to time. If a revision issued during the performance of this contract updates any relevant specification or requirement, the more stringent specification or requirement shall apply unless clarified in writing by the County.

- A. The work to be done under this Contract includes, but is not limited to, furnishing all plants, labor, materials, tools, equipment, superintendence, transportation and performing all work in strict accordance with these specifications and Drawings.
- B. The work consists of the construction and completion for shore erosion control protection improvements including all necessary appurtenances, hereinafter described and located.
- C. The work shall be done under contract to and the supervision of the Owner.
- D. The work shall be complete in all its parts and ready for use in the time specified and in strict accordance with the terms and conditions of the Contract. Any deviation shall be subject to the approval of the Owner and their representative.

- E. The Contractor shall follow the requirements and restrictions of all the permits issued for the proposed construction.
- F. The Contractor shall assume all responsibility for the project and construction site until accepted by the Owner or their authorized representative.
- G. The Contractor shall be prepared to execute a finished project in every particular without any extra charge, unless specifically provided for within the contract.

2.5. SPECIAL INSTRUCTIONS TO THE CONTRACTOR

A. Limited Disturbance

- 1. The Contractor shall confine all their work to the area delineated on the plans as “Limit of Disturbance (LOD).” Any changes in the Limits of Disturbance shall be subject to the approval of the applicable COTR

B. Project Meetings and Administration

- 1. Contractor shall hold progress meetings at the site once every two weeks at a time suitable to the Owner or Owner's Representative. Report progress of work in detail with reference to construction schedules. Each interested subcontractor will have presented a competent representative to report the condition of his branch of the work and to receive instructions. The Contractor shall take minutes of meetings and type and distribute them to members of the conference and others interested, within three (3) working days of the meeting.
- 2. Contractor shall request all subcontractors to carefully check all drawings and specifications and have representatives present at the first-called progress meeting. At this progress meeting, procedure for prosecution of the work will be discussed and any detailed requirements of the drawings and specifications, which are not understood, will be clarified.
- 3. Contractor shall submit required reporting as defined in Construction Submittals (5.6) and Contractor's Daily Report (5.8) of the contract document.

C. Project Record Documents

- 1. Documents: Maintain at the job site one copy of all Drawings, Specifications, approved Sediment and Erosion Control Plan Set, Addenda, approved Shop Drawings, Change Orders, Field Orders, Other contract Modifications, and other approved documents submitted by the Contractor in compliance with various sections of the Specifications.

a. As-Built Drawings

The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the Engineer and the Owner. Additionally, one set of all contract drawings must be maintained as “as-built” drawings. These as-built drawings shall be marked up by the Contractor in the field on a regular basis (at least monthly) to record all changes in the work as they occur, and the exact location of all work and equipment in such manner as will provide a complete, accurate “as-built” record. **Contractor will not be entitled to receive progress payments unless the on-site as-built drawings are kept up to date as required by the Contract.** “As-Built” drawings shall be delivered to the Engineer and Owner, in a condition satisfactory to them, as a condition precedent to Substantial Completion Inspection of the work. Final payment and release of final retainage, if any, will not be made until the as-built drawings are revised in accordance with the Engineer's and Owner's comments and these revised drawings are approved by the Engineer and the Owner.

2. Identification and Maintenance: Each of these Project Record Documents shall be clearly marked, "Project-Record Copy", maintained in good condition, available at all times for inspection by the Owner or Owner's Representative, and not used for construction purposes.

3. Records:

a. Mark up the most appropriate Document to show:

1. Significant changes made during the construction process.
2. Significant detail not shown in the original Contract Documents.

b. The information given shall include, but shall not be limited to:

1. The location of internal utilities and appurtenances, referenced to permanent surface improvements.
2. Any relocation of concealed structural components.
3. Other changes as directed by the Owner or Owner's Representative.

c. Keep Project-Record Documents current. Do not permanently conceal any work until the required information has been recorded.

D. Public Safety:

1. The Contractor shall exercise extreme care while moving equipment and material through the Work Area during construction, to assure public safety at all times. For this purpose, the Contractor shall coordinate with the applicable COTR to establish and implement appropriate traffic controls and safety precautions during construction.
2. The safety precautions shall include installation of safety fencing around access, staging, stockpile and other work areas; as well as providing steel plates to cover open trenches and rerouting pedestrian traffic using warning signs "Sidewalk Closed", and the like when required.

E. Test Borings:

While it is believed that test borings provided accurately indicate subsurface conditions for boring locations on the date taken, the County assumes no responsibility for actual conditions which may be encountered in execution of Contract. Should the Contractor rely, for any purpose, upon accuracy or completeness of said borings, or log thereof, they do so at their own risk.

Protection and Restoration (if necessary) of Existing Site Features:

1. The Contractor shall protect the existing trees, and any other existing utilities and structures located outside of the LOD (Limit of Disturbance) from damage during construction. If these site features are damaged, due to construction activities, the Contractor shall repair them, at their own expense, to a condition equal to or better than that found at the time of Award of Contract. Repairs will be made to the satisfaction and approval of the applicable COTR.
2. Utilities shown on the plans are based on the best available records and field determination at the time of the field surveys reflected on the Drawings. The Contractor shall verify horizontal and vertical locations of all utilities and shall provide adequate means of protection of all utilities during their operations. Any damage to the utilities caused by the proposed construction activities shall be repaired at the Contractor's expense to the satisfaction of the utility owner. The Contractor shall not interrupt the existing utility services, except when permitted in writing by

the applicable COR and only after acceptable temporary utility services have been provided. The Contractor shall notify Miss Utility and the applicable COTR prior to excavation.

3. If during construction operations the Contractor should encounter additional utilities, they shall immediately notify the Engineer and the Owner(s) of the utility and take all necessary and proper steps to protect the continuance of service. In case of damages to any existing utility installations by the Contractor, either above or below ground, they shall have such utility restored to a condition equal to that which existed prior to the damage at their entire cost and expense.

4. All utilities are to remain in service during the construction of this project unless written authorization for interruption of service is received from the utility owner and the interruption is approved by the applicable COTR.

5. It shall be the Contractor's responsibility to contact the respective utility owner concerned five (5) working days prior to proceeding with any work, which may affect their utility. The Contractor shall contact "Miss Utility" at 1-800-257-7777 or 811 before commencing any work.

6. Relocation of utilities may be in progress during the construction. The Contractor shall give priority to utility relocation work, and coordinate and schedule his work with the on-going utility work. No claims for schedule delays due to on-going utility work will be approved.

F. Site Preparation:

1. Prior to construction, the Contractor shall conduct a general cleanup of the various work areas, including fallen trees, limbs, brush, rock and other debris which will otherwise interfere with the construction activities; and shall dispose of all debris to an approved area off the project site.

2. Prior to construction, the Contractor shall verify and obtain approval from the applicable COTR for the location of the "Contractor's Tentative Access", and "Stockpile and Staging" areas. The Contractor is responsible for securing, providing, and maintaining a stockpile and staging area for this project at an off-site location.

3. If, between the time Drawings were developed and construction is to begin, it is determined that interim erosion has occurred, the proposed structure alignment may be adjusted, with the approval of the Owner, to conform to the existing beach as proposed by the Project Drawings. The intent is to maintain the relationships between the existing shoreline features and the proposed location of project components as those shown on the Drawings.

4. Access to the project site shall be water-based by barge.

5. The Contractor shall protect any existing structures from damage during construction unless specifically designated for modification in the construction documentation. If structures are damaged, due to construction activities, the Contractor shall repair them, at his own expense, to a condition equal to or better than that found at the time of Award of Contract. Repairs will be made to the satisfaction and approval of the Owner, or their agent.

6. Excess and unsuitable bank materials, resulting from the proposed construction, shall be hauled off the project site and taken to an approved disposal area at the Contractor's expense.

7. The Contractor shall verify horizontal and vertical locations of all utilities. He shall provide adequate means of protection during earthwork operations. Should uncharted or incorrectly charted piping or other utilities be encountered during excavation, consult the County immediately for directions as to procedure. Cooperate with the County and the utility companies in keeping respective services and facilities in operation. Repair damaged utilities to satisfaction of the County at no cost to the County. Do not interrupt existing utilities serving facilities occupied and used by the property owner(s) or others. The Contractor shall notify Miss Utility prior to any excavation.

8. The Owner assume no responsibility for actual soil conditions which may be encountered in the execution of Contract.
9. Upon the completion of the project, the Contractor will be responsible to regrade, stabilize, seed, mulch and completely restore all disturbed areas to a condition that is equal to or better than existing conditions.
10. The Contractor shall leave the site in a neat and orderly condition to the approval of the Owner and/or Owner's Representative. The Contractor shall legally dispose of all removed material off site at the Contractor's expense.
11. No trees are designated for removal for access for this project. However, trees within the boundary of the designated stockpile area only may be removed. Should tree removal be necessary for the construction of this project and prior to the cutting of any trees, the Contractor in company with the Owner or Owner's Representative shall mark all trees to be removed. They shall use all necessary care to prevent the roots and branches of trees designated to remain and to protect damage to persons and properties.
12. The Contractor shall begin construction activities within 10 days after the date of receipt of the Notice to Proceed to prosecute work diligently and complete the work in the time specified.

13. NOTIFICATION OF MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE)

The Contractor shall submit written notification to the Enforcement Section of the State of Maryland Department of the Environment at the address below at least 10 days before the proposed work begins and again within 10 days after the work is completed:

State of Maryland,
Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
410-537-3510.

14. Pre-Construction meeting with the St. Mary's County Soil Conservation District, 26737 Radio Station Way, Suite B, Leonardtown, MD 20650, Phone: 301-475-8402 ext. 3, must be scheduled and held by the Contractor prior to performing work.
15. The Contractor is responsible for the construction and maintenance of the temporary access road to the project site. Construction access and all material delivery shall be via the temporary access road. The temporary access road shall be maintained in a satisfactory condition until completion of the project and accepted by the Owner or Owner's representative. Daily worker traffic and vehicles are permitted to access the site by local roads. The Contractor shall coordinate with the Owner where daily worker vehicles shall be parked during the workday. No daily vehicles may be left at the site unless approved the Owner. The Contractor shall maintain a safe vehicular access for all local property owners. Maintenance and immediate repairs to any defects and/or damages on local roads shall be repeated as often as necessary to keep the road intact and passable. Any area of the local roads including private driveways as applicable that are damaged shall be repaired to equal or better than pre-construction conditions.

G. Access to Existing Residential Properties and Commercial Businesses

1. The Contractor must provide access and properly maintain entrances or access points to existing facilities during construction operations. This shall include all access to public parking areas.

H. Property and Easement Acquisition by County

1. All work shall be conducted according to the project plans and strictly within County property boundaries of the Piney Point Lighthouse and Museum.

2.6. PERMITS

- A. The Contractor shall adhere to the terms of the various permits issued to this Project. This shall include permits from the U.S. Army Corps of Engineers, the State of Maryland, St. Mary's County and any other applicable permits and approvals. The Contractor will be responsible for compliance with all permits and conditions, and the County will not be held liable for delays caused by the Contractor's failure to comply with the permit requirements in a timely manner.
- B. Pre-Construction meeting with the St. Mary's County Soil Conservation District must be scheduled and held by the Contractor prior to performing work.
- A. The Contractor will be responsible for compliance with all permits and conditions, and the County will not be held liable for delays caused by the Contractor's failure to obtain permits in a timely manner. This shall include but not be limited to:
 - Building Permit from the Department of Land Use and Growth Management, Commissioners of St. Mary's
 - Grading Permit - St. Mary's County Department of Public Works and Transportation,
 - Plan Approval - St. Mary's County Soil Conservation District-Pre-construction meeting,
 - Landscape Mitigation - Maryland Department of Natural Resources, and any other applicable permits as may be required-such as all applicable trade permits.
- B. A Pre-Construction meeting with the St. Mary's County Soil Conservation District must be scheduled and held by the Contractor prior to performing work.
- C. Any required permits for sites used for the disposal and/or stockpiling of material must be obtained, and copies must be provided by the Contractor to the County, before the commencement of on-site work. The Contractor shall be responsible for any costs of moving materials, including improperly stored materials.

2.7. OPEN TRENCHES

Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the Contract. The Contractor shall provide and place steel plates for roadway and driveway crossings, as necessary.

2.8. ORDER OF PRECEDENCE

The specifications, plans, exhibits, addenda and other Contract Documents are intended to be complementary towards the construction of a complete and useable facility. Therefore, except as stated above, there is no order of precedence, and the Contractor has the responsibility to notify the County of any variations between the plans and specifications as required in the clause entitled "Variance Between Plans and Specifications".

2.9. INSPECTION OF THE SITE

Bidders are urged to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the Contract; to the extent such information is reasonably obtainable.

Failure to do so will not relieve Bidders from responsibility for estimating properly the difficulty or cost of successfully performing the Work. In no event will failure to inspect the site constitute grounds for a claim after award of the Contract.

The County will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless included in the invitation for bids, the specifications, or related documents. Bidders unable to attend pre-bid / site visit can go on site to inspect the area during business hours.

3. PACKAGING AND MARKING

3.1. DELIVERY OF MATERIALS / EQUIPMENT

All materials and equipment shall be delivered to the project site or to an approved stockpile/staging area approved by the COTR FOB destination, pre-paid and allowed. Contractor shall be responsible for offloading and installing materials and equipment at the site. Bids submitted on a basis other than FOB destination, pre-paid and allowed will be rejected as non-responsive and deemed unacceptable.

- A. The term FOB destination as used above means that materials shall be delivered to project site free of expense to the County. The County shall not be liable for any delivery, storage, demurrage, accessories, or other charges incurred before the actual delivery to the destination unless such charges are caused by an act or order of the County.
- B. The Contractor shall:
 - 1. Pack and mark shipment to comply with specifications or in the absence of specifications in accordance with manufacturers and carrier's requirements.
 - 2. Deliver shipments in good order and condition to the point of delivery specified.
 - 3. Be responsible for any loss or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the Contract.
 - 4. Furnish a delivery schedule to the COR.
 - 5. Pay and bear all charges to the specified point of delivery for freight or mobilization.
- C. Contractor shall be available to receive delivery of all material and equipment at project site.

3.2. TEMPORARY FACILITIES

The Contractor may provide temporary weatherproof storage sheds for the storage of materials which might be damaged by weather or taken by theft, as well as a temporary field office. Sheds and a field office, if provided, shall be installed in accordance with all requirements of law regarding such structures; and removed upon completion of the Work at the Contractor's expense.

If requested, this item shall be subject to the approval of the COR of their designee.

4. INSPECTION AND ACCEPTANCE

4.1. INSPECTION BY THE COUNTY

Inspection and acceptance of the goods or services to be furnished shall be made at the job site location by the COTR-. Periodic and daily site visits may be made by the County. The County reserves the right to perform random inspections during the performance of the work under this Contract.

Until delivery and acceptance, and after any rejection, the **RISK OF LOSS** will be on the Contractor unless loss results from negligence of County.

4.2. ON-SITE INSPECTION

- A. At all times relevant to this Contract, the Contractor shall permit the County to enter upon the work site and to review or inspect the Work without formality or other procedure. The Contractor shall have made or permit to be made any inspections or testing, in addition to those required in the plan and specifications, that are required by the County as appropriate to ensure compliance with the requirements of this Contract.
- B. The County shall inspect the Work as it progresses. If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including inspections of work-in-progress as required by all authorities having jurisdiction over the Work, then the portion of Work so covered shall, upon demand of the COTR, be uncovered for observation and be replaced at the Contractor's expense without change in the Contract Performance Period.
- C. For any corrective work that the Contractor is required to perform, the Contractor shall provide the County and the Architect/Engineer of record with the procedures and material submittals that are required to correct the work.

4.3. FINAL INSPECTION AND ACCEPTANCE

Inspection and acceptance of work and materials shall be performed by the County. The COTR shall be responsible for inspection and acceptance.

- A. Final Acceptance for Maintenance:

Upon due notice from the Contractor of presumptive completion of the entire project, the COTR shall make a construction inspection; and if at such inspection all work provided for and contemplated by the Contract is found completed, such inspection shall constitute the final inspection and the COTR shall make the acceptance for maintenance as of that date and the Contractor shall be notified of such acceptance in writing.

- B. Timeliness of Inspection:

Unless otherwise provided for in this Contract, acceptance by the County shall be made as promptly as practicable after completion and inspection of all Work required by this Contract; or that portion of the Work that the COTR determines can be accepted separately. Acceptance shall be final and conclusive except in regard to latent defects, fraud, such gross mistakes as may amount to fraud or the County's rights under any warranty or guarantee, or any claims or counter claims reserved by the County. Inspection and acceptance of the services to be furnished hereunder shall be made by the appropriate department/agency at the time of acceptance of work.

5. DELIVERABLES / PERFORMANCE

5.1. ACCIDENT PREVENTION

- A. In performance of this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons, preventing damage to property, materials, supplies and equipment and avoiding work interruptions. For these purposes the Contractor shall provide appropriate safety items, to include but not be limited to personal protective equipment, barricades, signs, and signal lights, and take any additional measures which are reasonably necessary to safely complete the Work.

- B. The Contractor shall maintain an accurate record of all accidents incident to Work performed under this Contract which results in death, traumatic injury, occupational disease, or damage to property, supplies, materials, or equipment. The Contractor shall report this data in the manner prescribed by the COR.
- C. The COR will notify the Contractor of any non-compliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving notice, the Contractor shall immediately take corrective action.
- D. The Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- E. The Contractor shall be responsible for its Subcontractors' compliance with this section.

5.2. AVAILABILITY AND USE OF UTILITY SERVICES

The Contractor, at its expense and in a workmanlike manner satisfactory to the COR, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each Utility used for the project. Before final acceptance of the Work by the County, the Contractor shall remove all the temporary connections, distribution lines, meters and associated equipment.

5.3. CLEANING

-The Contractor shall keep all their work areas clean by the daily removal of accumulated waste materials and other debris caused by their operations. All waste generated by the performance of all, or any part of the Work shall be disposed of by the Contractor in accordance with all applicable laws, regulations, ordinances, policies, and guidelines.

- A. Any volatile waste must be stored in appropriate containers and removed daily. Burning or burying of waste is not permitted. Discharging volatile, harmful, or dangerous materials into a drainage system is strictly prohibited.
- B. Contractor must:
 - 1. Provide on-site containers for the collection of waste, rubbish, and debris. Wet down dusty materials and rubbish to prevent blowing dust during construction.
 - 2. Clean the lunch break area daily to prevent pests and fire hazard concerns.
 - 3. Remove snow and ice from access points.
 - 4. For final cleaning, complete cleaning operations before requesting review for Substantial Completion.

5.4. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

The date of commencement of the Work is the date established by the County in an NTP which will be issued to the successful Bidder following a Pre-Construction Meeting. The Contractor shall begin the Work within the required time frame set forth in the Contract Documents and shall carry the Work forward expeditiously and without interruption with adequate forces to complete the Work with the specified time frame allotted for the completion of the Work.

The date of substantial completion of the Work is the date certified by the County when construction is substantially complete and only punchlist or closeout items remain, in accordance with the Contract Documents.

5.5. CONSTRUCTION OPERATIONS

Prior to the commencement of their work, the Contractor shall prepare, for County approval, a drawing of the site showing a proposed construction operations plan including all temporary services and facilities required, storage areas, access roads, etc. The construction operations plan shall be submitted to the County as soon as possible after award of the Contract, but in no event later than mobilization to the site.

5.6. CONSTRUCTION SUBMITTALS

The required submittals for the performance of this Work, includes:

- A. Contractor's Construction Schedule.
- B. Schedule of Values.
- C. Submittal Schedule.
- D. Shop Drawings, if required.
- E. Daily Construction Reports.
- F. Samples.

The requirements contained in this section are in addition to requirements outlined under Contract Administration.

5.7. CONTRACTOR NON-PERFORMANCE

The County reserves the right to deduct amounts of monies due the Contractor for non-performance, not to exceed the pro-rated value. The County will notify the Contractor in writing of its intention to deduct for non-performance hours as they occur. At the end of the Contract term, the County will subtract cumulative deductions from the invoiced amount.

5.8. CONTRACTOR'S DAILY REPORT

The Contractor will be required to submit a "Daily Report" to the COTR. The report shall be completed daily and delivered to the COTR no later than one day following the report date. The report shall include, but is not limited to, data on workers by classification, the move-on and move-off of construction equipment furnished by the prime and subcontractor, work performed, quality control tests and results, materials and equipment delivered to the site of installation in the Work, and other data as requested.

5.9. CONTROL OF WORK - WEEKENDS/HOLIDAYS

At the discretion of the Contracting Officer, work under this Contract may be suspended on all Saturdays, Sundays, and Legal Holidays. The days immediately preceding or following these holidays may also be suspended.

A. SCHEDULE OF COUNTY HOLIDAYS

<u>HOLIDAY</u>
New Year's Day
Dr. Martin Luther King Jr's Birthday
President's Day
Good Friday

Memorial Day
Juneteenth
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day

5.10. COUNTY'S RIGHT TO CARRY OUT WORK

If the Contractor fails to carry out the Work in accordance with the Contract Documents or fails to correct deficiencies in a timely manner that are affecting the performance of the Work, the County may, after ten (10) days receipt of written notice to the Contractor, correct such deficiencies. A change order will be promptly issued deducting the cost of correcting same from the payment due the Contractor.

5.11. DAMAGES FOR DELAY

- A. The County and the Contractor agree that the County will incur damages as the proximate result of any failure by the Contractor to complete the Work within the time specified in the Contract, and any extension thereof granted by the Contracting Officer, and that such damages are not readily susceptible to calculation. If the Contractor fails to complete the Work within the time specified in the Contract, and any extension thereof granted by the Contracting Officer, the Contractor shall pay to the County the sum of One Thousand dollars (\$1,000.00) per day for each day of delay.
- B. If the County terminates the Contractor's right to proceed, the resulting damages will include the agreed sum for such reasonable time as may be required for the completion of the Work beyond the time specified in the Contract, and any extension thereof granted by the Contracting Officer, together with any increased costs incurred by the County in completing the Work.
- C. If the County does not terminate the Contractor's right to proceed, the resulting damages will consist of the agreed sum for such reasonable time as may be required for the completion of the Work beyond the time specified in the Contract, and any extension thereof granted by the Contracting Officer.
- D. The Contractor shall have thirty (30) days after the date of Substantial Completion to complete the work contained within the punch list. If the work contained thereon is not completed within such thirty (30) day period, the sum of Five Hundred dollars (\$500) per day will be deducted from the Contract Price until the Date of Final Completion and acceptance of the work contained on that punch list.

5.12. DELAYS AND EXTENSIONS OF TIME

Should the Contractor be delayed at any time in the progress of the Work by any act or neglect of the County or by any changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any cause beyond the Contractor's and/or subcontractor's control, or by delay authorized by the County, then the Contract Time shall be extended by change order for such reasonable time as the County may, at its sole discretion, determine. All claims for extension of time shall be made in writing to the County no more than twenty (20) days after the occurrence of delay; otherwise, the basis for such delay shall be deemed waived by the Contractor. In the case of continuing cause of delay, only one claim stating that the course of the delay is continuing and giving the nature of the delay is necessary.

5.13. FIELD ENGINEERING

The following administrative and procedural requirements for field engineering services include but are not limited to:

1. Land survey work.
2. Civil Engineering Services.
3. Structural Engineering Services.
4. Geotechnical Engineering Services.
5. De-watering System.

The Contractor shall submit a record of work performed and record survey data as required in accordance with Solicitation/Contract requirements.

A. Survey Reference Points:

1. Establish a minimum of two (2) permanent benchmarks on site, referenced to establish control points. Record locations of the control points secured with horizontal and vertical data.
2. Protect survey control points prior to starting site work; preserve permanent reference points during construction.
3. Promptly report to the County and the project engineer the loss or destruction of any reference point or relocation required because of changes in grades or other reasons.
4. Replace dislocated survey control points based on original survey control. Make no changes without prior written notice to the County.

B. Survey Requirements:

1. Provide field engineering services to establish elevations, lines, grades, and levels. Locate and lay out Work by instrumentation and similar engineering survey practices.
2. Prior to commencement of Work, verify and establish base elevations, if applicable, of existing facilities to assure that new Work will meet existing elevations in smooth and level alignment, except where specifically detailed or indicated otherwise.

C. Examination:

1. Verify layout information shown on the drawings, in relation to the property survey and existing benchmarks before proceeding to lay out the Work. Locate and protect existing benchmarks and control points. Preserve permanent reference points during construction.

- a. Do not change or relocate benchmarks or control points without prior written approval. Promptly report lost or destroyed reference points. Also report any requirements to relocate reference points because of necessary changes in grades or locations.
- b. Promptly replace lost or destroyed project control points. Base replacements on the original survey control points.
2. Establish and maintain a minimum of two (2) permanent benchmarks on the site, referenced to data established by survey control points.
 - a. Record benchmark locations, with horizontal and vertical data, on Project Record Documents.
3. Existing utilities and equipment: The existence and location of the underground and other utilities and construction indicated as existing are not guaranteed. Before beginning site work, refer to requirements shown on civil drawings regarding Miss Utility.

D. Performance:

1. Working from lines and levels established by the property survey, establish benchmarks and markers to set lines and levels at each story of construction and elsewhere as needed to properly locate each element of the Project. Calculate and measure required dimensions within indicated or recognized tolerances. Do not scale drawings to determine dimensions.
 - a. Advise entities engaged in construction activities of marked lines and levels provided for their use.
 - b. As construction proceeds, check every major element for line, level and plumb.
2. Surveyor's Log: Maintain a surveyor's log of control and other survey work. Make this log available for reference.
 - a. Record deviations from required lines and levels and advise the project engineer when deviations that exceed indicated or recognized tolerances are detected. On Project Record Drawings, record deviations that are accepted and not corrected.
3. Existing Utilities: Coordinate with local authorities and utility companies having jurisdiction.
4. Dewatering: If dewatering of the site must occur, placement, survey, installation, and operation of the dewatering/sump condition is borne at the sole cost of the contractor.

5.14. LAYOUT OF WORK

The Contractor shall lay out its work from County-established base lines and benchmarks indicated on the project drawings and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, plant equipment, tools, materials and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the COR. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the COR until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the COR may replace them and deduct the expense of replacement from any amounts due or to become due to the Contractor.

5.15. OPERATION AND STORAGE AREAS

The Contractor shall confine all operations (including storage of materials) on County premises to areas authorized or approved by the COR. The Contractor shall hold and save the County, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's use of these areas in the performance of this Contract.

5.16. ORAL MODIFICATION

No oral statement shall in any manner or degree, modify or otherwise affect the terms of the Contract.

Any information given a prospective Bidder concerning a solicitation will be furnished promptly to all other prospective Bidders as an amendment to the solicitation if that information is necessary in submitted bids or if the lack of it would be prejudicial to other prospective Bidders. Oral explanations or instructions from any person whomsoever will not be binding prior to award or during performance of Contract.

5.17. PRE-CONSTRUCTION MEETING

Prior to commencement of work, the Contractor shall meet with representatives of the County to discuss Contract requirements, develop a mutual understanding pertaining to administration of the Contract, scheduling, and safety and security requirements.

During the Pre-Con meeting, the Contractor shall state any assumptions made and address any issues that they feel remain unclear or ambiguous so that the County may provide any necessary clarifications in writing.

5.18. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

Any damage caused by the Contractor's operations shall be repaired or replaced at no expense to the County.

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which do not unreasonably interfere with the Work required under this Contract. The Contractor shall remove trees only when specifically authorized to do so by the COR/COTR, and shall avoid damaging remaining vegetation (in the critical area and otherwise).
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on the adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.
 1. It is the responsibility of the contractor to verify any and all utility locations with Miss Utility and respective service providers. The Contractor shall verify horizontal and vertical locations of all utilities and shall provide adequate means of protection of all utilities during their operations. Any damage to the utilities caused by the proposed construction activities shall be repaired at the Contractor's expense to the satisfaction of the utility owner. The Contractor shall not interrupt the existing utility services, except when permitted in writing by the COR and only after acceptable temporary utility services have been provided. The Contractor shall notify Miss Utility (and any utility not mapped by Miss utility) and the COTR prior to excavation.
- C. The Contractor shall repair any damage to those facilities, including property of a third party, which are the result of a failure to comply with the requirements of this Contract, or a failure to exercise reasonable care in performing the Work. Repairs will be made to the satisfaction and approval of the COR. If the Contractor fails or refuses to repair the damage promptly, the COR may have the necessary work performed, and charge the cost to the Contractor.

5.19. QUALITY AND ACCEPTABILITY OF WORK

The COTR will determine the quality and acceptability of the Work.

Any instance of unsatisfactory or improper work will be called to the attention of the Contractor who shall see that such deficiencies are corrected promptly.

5.20. QUALITY CONTROL PLAN

The Contractor shall submit seven (7) calendar days in advance of the Pre-Construction Meeting a Contractor Quality Control Program and a finalized Safety Plan. The Contractor will not commence on-site activities until such time that these plans have been accepted by the County.

The following notifications, in addition to any other notifications required by law, must be made under the terms and requirements of this Contract:

- A. The Contractor shall provide written notice to the COTR at least 48 hours prior to the start of all construction. Periodic daily site visits may be made by the County.
- B. The Contractor shall provide written notice to the COTR at least 48 hours prior to a pre-construction meeting at the site with a representative from the St. Mary's Soil Conservation District to discuss with the Contractor the requirements for sediment and erosion control in accordance with the construction drawings.

5.21. SANITATION

There are no sanitary toilet facilities available for Contractor use. Adequate sanitary conveniences of any approved type for the use of persons employed on the Work, and properly secluded from public observation, shall be constructed and maintained by the Contractor in such a manner and at such points as shall be required or approved by the County. These conveniences shall always be maintained without nuisance and their use shall be strictly enforced. Upon completion of the Work, they shall be removed from the premises, leaving the premises clean and free from nuisance.

5.22. SECURITY OF PROPERTY

The security of the Contractor's property shall be the full responsibility of the Contractor as the County accepts no liability for loss due to fire, theft, pilferage, etc. Proper measures shall be taken to ensure maximum safety and protection for personnel and property.

5.23. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to the situations outlined below.
 - 1. Conditions bearing upon transportation, disposal, handling, and storage of materials.
 - 2. The availability of labor, water, electric power, and roads.
 - 3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site.
 - 4. The conformation and condition of the ground; and
 - 5. The character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the County as well as from the project drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and

acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to the County.

- B. The County assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the County; nor does the County assume any responsibility for any understanding reached or representations made concerning conditions which can affect the Work by any of its officers or agent before the execution of this Contract unless that understanding or representation is expressly stated in this Contract.

5.24. STORAGE OF MATERIALS AND EQUIPMENT

- A. The Contractor shall be fully responsible for the security of the Contractor's materials and equipment stored at the Project site. The County will accept no liability in the case of loss due to fire, theft, pilferage, etc. Proper measures shall be taken by the Contractor to ensure maximum safety and protection for personnel and property. Deliver, store and handle products in accordance with the manufacturer's recommendations, using means and methods that will prevent damage, deterioration, loss, and theft.
- B. The Contractor shall be responsible for payment, at its own expense, of all costs, including moving or transportation costs related to off-site storage of materials.

5.25. STORM PROTECTION

Should warnings of winds of gale force or stronger be issued, the Contractor shall take every practicable precaution to minimize danger to a person, to the Work and to surrounding property, real and personal. The replacement of damaged materials is the sole responsibility of the Contractor and at the Contractor's expense.

5.26. SUPERVISION AND CONSTRUCTION PROCEDURES

At all times during performance of this Contract, and until the Work is completed and accepted, the Contractor shall directly superintend or assign and have on the Work site a competent superintendent who is satisfactory to the COTR and has authority to act for the Contractor.

- A. The Contractor shall strictly supervise the Work and bear full responsibility for all acts or omissions of those engaged in the Work on behalf of the Contractor. The Contractor shall supervise and direct the Work, using their best skill and attention, and shall be responsible for all materials delivered and work performed until completion and acceptance of the Work. The Contractor shall be solely responsible for all construction means, methods, techniques, equipment, and procedures and for coordinating all portions of the Work under this Contract, to include safety precautions and programs. The Contractor agrees that it, the Contractor, is fully responsible to the County for the acts, quality of work and omissions of its Subcontractors and of persons either directly or indirectly employed by them as it is for the acts, quality of work and omissions of persons directly employed by the Contractor. The Contractor shall be responsible for the coordination of all trades and subcontracts regardless of the specifications heading, and for making necessary provision for accommodation of all equipment and fittings and patching after installation.
- B. The Contractor **WARRANTS THAT ALL LABOR FURNISHED UNDER THIS CONTRACT SHALL BE COMPETENT TO PERFORM THE TASKS UNDERTAKEN, THAT THE PRODUCT OF SUCH LABOR SHALL YIELD ONLY HIGH-QUALITY RESULTS, THAT ALL MATERIALS AND EQUIPMENT PROVIDED SHALL BE NEW AND OF HIGH QUALITY, THAT THE COMPLETED WORK WILL BE COMPLETE, OF HIGH QUALITY AND WITHOUT DEFECTS, AND THAT ALL**

WORK STRICTLY COMPLIES WITH THE REQUIREMENTS OF THIS CONTRACT. Where lesser grades are required by the specifications, the phrase “high quality” shall refer to the spectrum of quality possible within the grade(s) specified. **ANY WORK NOT STRICTLY COMPLYING WITH THE REQUIREMENTS OF THIS SUBPARAGRAPH SHALL CONSTITUTE A BREACH OF THE CONTRACTOR’S WARRANTY.**

- C. Before the commencement of on-site work, but no later than fourteen (14) business days after the date of the Notice of Award, the Contractor shall provide a written description of the Contractor’s project team for this Work, indicating all supervisory personnel and their responsibilities and authority to direct the Work. The County shall have the right to dismiss the Superintendent from the project for unsatisfactory performance, and the Contractor shall provide a satisfactory substitute at no additional cost. The Contractor shall not replace the Superintendent without the written consent of the County.
- D. Prior to the start of work at site, the Superintendent shall thoroughly examine all Contract Documents and be fully familiar with all phases of the Work. While any work is being performed on the construction site, the Contractor will have the approved Superintendent on site.
- E. The Contractor shall keep an updated copy of this Contract, a current set of project drawings and copies of approved submittals at the site. All these items shall be available to the County at all regular business hours. Upon completion of the Work, all these items shall be finally updated and provided to the County and shall become the property of the County.
- F. The Contractor must provide an interpreter for any employee on-site that does not speak or understand English. The interpreter must be fluent in speaking and understanding the employee’s native language. The interpreter must always be present when workers who require translation services are on-site.

5.27. WARRANTY OF CONSTRUCTION

All warranty work will be scheduled within five business days of receipt of written notice.

- A. **In addition to any other warranties set out elsewhere in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed, by the Contractor or any of its agents, employees or subcontractors for a period of one year from the date of Substantial Completion, but without any respect to any part of the Work which the County takes possession of prior to final acceptance, whereupon such warranty shall continue for a period of one year from the date the County takes possession. Under this warranty, the Contractor shall promptly remedy at their own expense any such failure to conform or any such defect. In addition, the Contractor shall promptly remedy, at their own expense, any damage which is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any part of the Work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to any part of the Work repaired or replaced hereinafter will run for one year from date of such repair or replacement.**
- B. The County shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

- C. Should the Contractor fail to remedy any failure, defect, or damage described above within a reasonable time after receipt of notice thereof, the County shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's sole expense.
- D. In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties, expressed or implied, respecting any part of the Work or materials, at the direction of the County, shall be enforced and ensure to the benefit of the County. The Contractor shall obtain any and all warranties which the subcontractors, manufacturers, or suppliers provide and require them to execute their warranties in writing directly to the County.
- E. The Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work and include all work whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with all applicable laws, codes and professional standards. The Contractor represents that the subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligation.

5.28. WORK SCHEDULE

The Contractor shall within ten (10) calendar days, or within such time as determined by the County, after date of Notice-of-Award prepare and submit to the COR for acceptance a practicable schedule showing the order in which the Contractor proposes to carry on the Work, the date on which they will start the several salient features (including procurement of material, and plant equipment) and the contemplated dates for completing same in order to meet the project phasing requirements detailed on the construction plans. The schedule shall be maintained current with each submittal and contain at least the following information:

- A. The various classes and areas of work as listed in the Schedule of Prices, broken down into:
 - 1. Times projected for submittals, approvals, and procurement.
 - 2. Times for installation and erection.
 - 3. Times for testing and inspection.
- B. The Work completed and the Work remaining to be done to complete the Project.
- C. Any items of work which will delay the start or completion of other major items of work so as to delay completion of the whole Project.
- D. The Contractor's schedule must anticipate inclement weather that will impact weather dependent operations. For planning purposes, plan on the following number of lost days due to weather (based upon a five-day work week): January 4 July 2 February 4 August 3 March 4 September 2 April 5 October 3 May 5 November 4 June 2 December 4

Inclement weather shall not be a *prima facie* reason for the granting of an extension of time, and the Contractor shall make every effort to continue work under prevailing conditions. The County may, however, grant an extension of time if an unavoidable delay because of inclement weather in fact occurs, and such shall then be classified a "Delay". An "inclement weather delay day" is defined as a day on which the Contractor is prevented by inclement weather, or conditions adverse to the current controlling operation, or operations as determined by the COTR, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being current spent on the controlling operation or operations.

The Contractor shall submit an updated copy of their schedule with each invoice, and when required by major changes in the Work. Each revision shall be submitted for acceptance by the County. The Contractor shall comply with the Project Schedule and any revision once same is accepted. If the Contractor fails to submit a progress schedule within the time prescribed, the COTR may withhold approval of progress payments until such time as the Contractor submits the required progress schedule. The Contractor must follow all contract requirements as a precedent condition of payment.

If, in the opinion of the COR/COTR, the Contractor falls behind the accepted progress schedule, the Contractor shall take such steps as may be necessary to improve their progress. The County may require the Contractor to increase the number of shifts, or overtime operations, days of work, to the amount of construction planned at all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional costs to the County.

Failure of the Contractor to comply with the requirements of the County under this subsection shall be grounds for determination by the County that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the time specified. Upon such determination, the County may terminate the Contractor's right to proceed with the Work, or any separable part thereof, in accordance with the clause of the Contract entitled "Termination for Default."

5.29. WORKMANSHIP

- A. All work shall strictly conform to the requirements of this Contract. Workmanship shall be first class in every respect and accomplished by competent journeymen. Any instance of unsatisfactory work shall be called to the attention of the Contractor who shall see that such deficiencies are corrected no later than fifteen (15) calendar days after receipt of written notice. Any damage caused by the Contractor's operations shall be repaired or replaced by the Contractor at no expense to the County. All Work is to be performed in accordance with standard practices, unless otherwise indicated, and accomplished in a neat and orderly manner.
- B. All work is to be performed in accordance with standard practices and to manufacturer's specifications, and accomplished in a neat and orderly manner. The direction of the COR shall govern those cases where a specific Code or Manufacturer's Specification does not exist.
- C. All equipment, material and articles incorporated into the Work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the Specifications to equipment, material, articles, or patented processes by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, or process that, in the judgment of the Contracting Officer, is equal to that named in the Specifications, unless otherwise specifically provided in this Contract.
- D. All work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

5.30. PERIOD OF PERFORMANCE

The Contractor will be required to commence work after the Contract award within ten (10) calendar days from the date shown in the Notice to Proceed (NTP). The Contractor shall follow through and prosecute said work diligently, and to substantially complete the overall project entirely ready for its intended use within One Hundred and Eighty (180) calendar days at which time the Work shall be completed, and Project will be in a finished condition, as specified, and all equipment, tools, and surplus waste material will have been removed from the job site.

6. CONTRACT ADMINISTRATION

6.1. DEFINITIONS

Wherever the words defined in this section or pronouns used in their stead occur in the Solicitation, Specifications, Contract or Bond, shall have the meaning here given.

- A. **BIDDER/CONTRACTOR/OFFEROR:** Terms are used interchangeably but represent the same party.
- B. **CONTRACTING OFFICER:** Duly authorized agent for the County acting solely in their respective capacity. Only the Contracting Officer is authorized to modify contracts.
- C. **CONTRACTING OFFICER'S REPRESENTATIVE (COR):** The duly employed Department Head of the using Department who shall manage awarded contracts for their Department. The COR is responsible for administering any orders placed pursuant to the Contract. Only the Contracting Officer is authorized to modify contracts, and such modifications shall be in the form of either a Purchase Order or a Contract Modification, as warranted.
- D. **CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR):** The County employee who serves as the COR's technical representative for the purposes of administering the contract. The COTR may designate one or more additional representatives to assist with contract administration, and as approved by the COR.
- E. **CONTRACTOR:** The party of the second part, or the agent appointed to act for said party, entering into the Contract for performance of the Work required by it.
- F. **COUNTY:** Used to refer to the Commissioners of St. Mary's County, a body politic and corporate, and the issuing authority for this document, also known as the St. Mary's County Government.
- G. **INSPECTOR:** The authorized representative of the County assigned to make any or all necessary inspections of the Work performed, methods used, and materials furnished by the Contract or to complete the Work or any part thereof.
- H. **CONTRACT DOCUMENTS:** The written agreement executed between the County and the Contractor, covering the performance of the Work, and furnishing of labor, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, plant equipment, and materials, and by which the County is obligated to compensate at the agreed upon rate or price. The Contract Documents include the Invitation for Bids, Notice to Contractors, Instructions to Bidders, Proposal, Contract Forms and Bonds, General Provisions, Specifications, Supplemental Specifications, all Special Provisions, all Technical Provisions, all Plans and Notices to Proceed, also any written Change Orders and Supplemental Agreements that are required to complete the construction of the Work in an acceptable manner, including any authorized extension thereof.
- I. **CHANGE ORDER:** A written order signed by the Contracting Officer, in accordance with the terms of the Contract, directing the Contractor to make changes to the specifications, delivery schedule, with or without the consent of the Contractor.
- J. **CONTRACT SUM:** Base bid plus all Alternates accepted by the County at the rate set forth in the Proposal Form.

- K. **SHOP DRAWINGS:** The term “shop drawings” includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract.
- L. **ENVIRONMENTAL LAWS:** The term “Environmental Laws” means all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any Local, State or Federal laws or regulation relating to pollution, nuisance, or the environment including, without limitation, (I) the Federal Clean Air Act, 42 U.S.C. §7401, et seq.; (ii) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq. (“CERCLA”); (iii) the Federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11-001, et seq.; (iv) the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq.; (v) the Clean Water Act, 33 U.S.C. §1251, et seq.; (vi) the Solid Waste Disposal Act, 42 U.S.C. §6921, et seq.; (vii) the Safe Drinking Water Act, 42 U.S.C. §300f, et seq.; (viii) the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; (ix) laws or regulations relating in whole or part to emissions, discharges, releases, or threatened releases of any Hazardous Material; and (x) laws or regulations relating in whole or part to the manufacture, processing, distribution, use coverage, disposal, transportation, storage or handling of any Hazardous Material.
- M. **HAZARDOUS MATERIALS:** The term “Hazardous Materials” means any hazardous, infectious, or toxic substance, chemical, pollutant, contaminant, emission, byproduct, product, compound, or waste that is or becomes regulated by any Local, State or Federal Environmental Laws, as defined herein. Hazardous Materials include, without limitation, anything that is: (I) defined as a “pollutant” pursuant to 33 U.S.C. §1362(6); (ii) defined as a “hazardous waste” pursuant to 42 U.S.C. §6921; (iii) defined as a “regulated substance” pursuant to 42 U.S.C. §6991; (iv) defined as a “hazardous substance” pursuant to 42 U.S.C. §9601(14); (v) defined as a “pollutant or contaminant” pursuant to 42 U.S.C. §9601(33); (vi) defined as a “contaminant: and which has been assigned either a “maximum contaminant level” or “maximum contaminant level goal” pursuant to 42 U.S.C. §300F and §300G; (vii) petroleum (including crude oil or any fraction thereof); (viii) lead-based paints: (ix) asbestos; or (x) polychlorinated biphenyl.
- N. **SUBSTANTIAL COMPLETION:** The term “Substantial Completion” means the stage in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with Contract Documents so that the County can utilize the Work for its intended purpose. The only remaining work shall be minor in nature.
- O. **REASONABLE TIME:** The term “reasonable time,” whenever used in the context of a party rendering a decision or taking an action, is understood to mean no more than fourteen (14) calendar days unless otherwise specifically noted in the Contract Documents.
- P. **DAY:** The term “day,” whenever used, will refer to calendar days unless otherwise noted.
- Q. **WORK:** The term “Work” means the services and Deliverables required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor’s obligations. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

6.2. APPOINTMENT OF REPRESENTATIVES

The following individual is appointed as the **COTR**:

Kimberly Connor, Project Manager
Department of Public Works & Transportation

A County representative may also be assigned to function as an on-site Project/Construction Manager to coordinate the day-to-day operations within the scope of work. This individual is used to coordinate approved work only and is not authorized to direct the Contractor.

The following individual is appointed as the **COR**:

Donald F. Mills,
Professional Land Surveyor, Acting Director
Department of Public Works and Transportation

No authority to modify any provisions of this Contract is granted. Any deviation from the terms of this Contract must be submitted for contractual action to the following Contracting Officer:

Brandon Hayden, CPP, CPPM, CGPP; Procurement Manager
Department of Finance, Office of Procurement
P.O. Box 653
41770 Baldrige Street
Leonardtown, Maryland 20650
301-475-4200 x71223

6.3. CONTRACTOR'S INVOICE

The Contractor shall prepare and submit an original and two (2) copies of their monthly invoice to the Contracting Officer's Representative at:

Department of Public Works & Transportation
Attn: Kimberly Connor, Project Manager
PO Box 508
44825 St. Andrews Church Road
California, MD 20619

Invoice information must be completed in accordance with requirements outlined in this solicitation/Contract and work satisfactorily performed and inspected by the Contracting Officer's Representative prior to acceptance. Invoices shall contain the following information:

- A. Name of Contractor,
- B. Contract and Purchase Order Number,
- C. Description and Date of Work with supporting documentation
- D. Item Numbers
- E. Unit cost, quantity, and total cost for each item for which payment is requested
- F. Previously paid items
- G. Invoice Date and Reference Number
- H. Change Order additions and reduction amounts
- I. Partial release of liens or Affidavit of Payment from Subcontractors

Invoices not containing the information above will be considered incomplete and possibly returned to the Contractor for correction.

Along with the standard company issued invoice, an American Institute of Architects Application for Certification and Payment (AIA Document G702) shall be issued by the Contractor.

6.4. PAYMENT TO CONTRACTOR

Payment will be made within 30 days after receipt of Contractor invoice by the County's Finance Department, provided that the applicable COR has determined all Contract specifications have been complied with and total acceptance of the invoice is in accordance with Contract specification requirements.

The County uses an electronic payment system and prefers its significant contract payments be processed via that method. One of the available methods is ACH processing, which has no fee or cost associated with it. The successful Bidder is recommended to enroll in that system which will expedite payments, and upon receipt of the Notice of Intent to Award, will be provided the information needed to register directly with the secure third-party vendor for such payment processing.

6.5. ADDRESS TO WHICH PAYMENT SHALL BE MAILED

Bidder shall indicate on the Proposal Form the address to which payment should be mailed, if such address is different from that shown for the Bidder. If payment is to be made to another address, the Contractor shall identify that on the Representations and Certifications Form.

6.6. SCHEDULE OF VALUES

- A. Before the first application for payment, the Contractor shall submit to the County a schedule of values of the various portions of the Work, including quantities, aggregating the total Contract Price, divided so as to facilitate payments to subcontractors prepared in such as specified or as the County and the Contractor may agree upon, and supported by such data to substantiate its correctness as the COTR may require. Each item in the Schedule of Values shall include its proper share of overhead and profit. This schedule, when approved by the County, shall be used only as a basis for the Contractor's applications for payment.
- B. The partial payment application by the Contractor shall be made on a monthly basis and will be made only after the Contractor's invoice has been approved by the County. **NO PARTIAL PAYMENTS WILL BE MADE UNTIL AFTER THE SCHEDULE OF VALUES HAS BEEN SUBMITTED TO AND APPROVED BY THE COUNTY.** Advance payments are not made. Payment requests shall only be submitted by the Contractor for the completed work. Once the Schedule of Values is approved, no change to this schedule will be allowed.

6.7. PAYMENT WITHHELD

The applicable COTR may decline to approve an application for payment and may withhold the certificate in whole or part, to the extent necessary and reasonable to protect the County. The applicable COTR may also decline to approve any application for payment, and they may nullify the whole or any part of any certificate for payment previously issued, to such extent as may be necessary in their opinion to protect the County from loss because of:

- A. defective work, in whole or in part, not remedied,
- B. third party claims filed or reasonable evidence indicating probable filing of such claims,
- C. failure of the Contractor to make payments properly to Sub-contractors for labor, materials, or equipment,
- D. reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price,

- E. damage to another Contractor, or
- F. unsatisfactory prosecution of the Work by the Contractor

Once the above grounds are addressed, payment will be issued for the previously withheld amounts.

6.8. PROGRESS PAYMENTS

- A. For each monthly pay application, the County will make payments on account of the Contract as follows; ninety-five percent (95%) of the value of the Work completed up to the final day of the previous month, as approved by the applicable COR.
- B. Prior to submitting each monthly pay application, the Contractor will be required to prepare a rough draft of the payment request for review and approval. The rough draft will be reviewed by the applicable COR, and the Contractor at the Progress Meeting immediately preceding the due date for submitting each payment request. Pay applications shall be based upon the Schedule of Prices, the updated progress schedule, and any nonconformity with the required documentation will be cause to return the application unprocessed. The Contractor shall provide complete cooperation during any such investigation to correct the nonconformity.
- C. Until all phases of the overall Work are certified as substantially complete by the applicable COR as described in the Section G clauses entitled “Substantial Completion” and “Final Payment”, the County will pay ninety-five (95%) percent of the amount due the Contractor on account of Progress Payments. However, neither a certificate for a progress payment nor any progress payment shall constitute an acceptance of any Work not in accordance with the Contract Documents.
- D. The Contractor acknowledges that the State of Maryland has placed a 5% cap on retainage for construction contracts in excess of \$250,000 when a performance and payment bond is furnished. The Contractor also acknowledges that the retainage percentage of any payment due under the terms of this Contract from the Contractor to any subcontractor may not exceed the 5% retention from the County to the Contractor. The same restriction applies to second and third tier subcontractors.

6.9. MODIFICATION OF CONTRACT SUM

- A. Increase / Decrease Within Scope of Work
The Schedule of Unit Prices shall be used to determine changes that result in increases or decreases to work within scope.
- B. Modification to Scope of Work
In the event of changes to scope of work, such modifications must be authorized in advance by written Contract modification, and shall be accomplished as outlined below:
 - 1. The Contractor shall promptly submit to the COR/COTR a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
 - 2. For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor’s fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. If requested by the County, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.

3. Modifications of the Contract Price, when required, shall be determined as follows:
 - a. When unit prices are stated in the Contract or have been subsequently agreed upon, by application of such unit prices.
 - b. A lump sum price agreed upon by both the County and Contractor.

The Contractor shall not request and will not receive any compensation based on Change Orders or Modification of this Contract until such changes have been signed in writing by both parties (Contractor and County.) The Project shall conform to the construction specifications and project drawings as included in this Solicitation.

The solicitation and all documents incorporated herein, in conjunction with accepted bid, proposal forms, affidavits and attachments shall become the Contract agreement between the Contractor and County.

6.10. RETAINAGE

The County will retain five percent (5%) of the value of completed Work during the course of construction.

Retainage may become eligible for release at the following milestones:

- A. **Substantial Completion or partial acceptance for use:** After the Work is determined by the County to be substantially complete, and if the manner of completion of the Work and its progress are and remain satisfactory to the County, and in the absence of other good and sufficient reasons to protect the County, the County may, upon presentation by the Contractor of a Consent of Surety to Release of Retainage, certify for payment to the Contractor a partial release of funds being held as retainage by the County relative to the completed work, to reduce the retainage amount due to the Contractor under this Contract. This payment must be requested by the COR and approved by the Contracting Officer prior to payment. If approved, the requested retainage will be paid within 120 days of the date of Substantial Completion, or the date of the request; whichever is later.
- B. **Final Completion and Acceptance:** After the Work is determined by the County to be complete, and the Final Payment has been made with all remaining PO Balances liquidated, any and all remaining Retainage being held by the County will be released within 90 days of Final Completion and Acceptance of the Work; subject to the receipt of a Consent of the Surety to Release of Retainage form and any other required closeout documentation. This payment must be requested by the COR and approved by the Contracting Officer prior to payment. If approved, the retainage balance will be paid within 90 days of the date of Final Completion, or the date of the request; whichever is later.

6.11. SUBSTANTIAL COMPLETION

At the time all portions or phases of the Work have been inspected for acceptance and determined by the County to be substantially complete with only punchlist items remaining; and if the manner of completion of the Work and its progress are and remain satisfactory to the County, the County may declare that the Work is substantially complete. The Contractor may request a partial release of retainage, subsequent to this declaration.

- A. All Punchlist items should be scheduled at the discretion of the COR for correction within 30 days of Substantial Completion, or at the earliest possible date if the items are weather or supply chain dependent.
- B. The full Contract retainage may be reinstated if the manner of work or progress doesn't remain satisfactory to the County.

6.12. FINAL PAYMENT

Upon receipt of written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final application for payment, the COTR will make such inspection. Subsequent to finding that the Work is acceptable under the Contract Documents and the Contract fully performed, the COTR will notify the Contractor in writing to declare Final Completion and advise the Contractor to issue a Certificate of Contract Completion for final payment, using the form provided by the County.

The final payment shall become due following the Contractor's submission and acceptance by the County of:

- A. Consent of Surety to Final Payment and Release of Retainage; and
- B. List of all Sub-Contractors and Material Suppliers with current points of contact
- C. Current and up-to-date Project record documents, including approved "As-Built"; and
- D. Final Release of Claims in a form specified and provided by County.
- E. If required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract to the extent and in such form as may be designated by the County. If any subcontractor refuses to furnish a release or waiver required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify the County against any such lien. If any such lien remains unsatisfied after all payments are made, the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

6.13. CRITICAL PATH METHOD (CPM) REQUIREMENTS

For all projects where the base bid exceeds \$1,000,000, the Contractor shall use the Critical Path Method (CPM), the Program Evaluation and Reporting Technique (PERT), or, subject to approval of the County, some other system which will give similar and equal information and control to that provided by the named systems. The Contractor shall comply with the following CPM requirements:

- A. Activity Durations: Contractor submissions shall follow the direction of the Contracting Officer's Representative regarding reasonable activity durations. Reasonable durations are those that allow the progress of activities to be accurately determined between payment periods (usually less than 2 percent of all non-procurement activities Original Durations are greater than 20 days).
- B. Design and Permit Activities: Design and Permitting Activities, including necessary conferences and follow-up actions and design package submission dates, shall be integrated into the schedule.
- C. Procurement Activities: Tasks related to the procurement of long lead materials or equipment shall be included as separate activities in the project schedule. Long lead materials and equipment are those materials that have a procurement cycle of over 90 calendar days. Examples of procurement process activities include, but are not limited to, submittals, approvals, procurement, fabrication, and delivery.
- D. Critical Activities: The following activities shall be listed as separate line activities on the schedule:
 - 1. Submission and approval of: (including but not limited to)
 - a. Mobilization
 - b. Sediment and Erosion Control Measures
 - c. Grading and Excavation

- d. Building Layout (interior)
- e. Underslab Utility Inspection
- f. Coordination Drawings
- g. Steel Shop Drawings
- h. Delivery of Steel
- i. Testing and Acceptance of Steel
- j. Mechanical Submittals
- k. Electrical Submittals
- l. Roof Pre-Installation Conference
- m. Mechanical Start-Up
- n. Testing and Balancing (TAB) Report; to include:
 - Air and Water Balance Dates
 - HVAC Commissioning Dates (on-site work)
 - Controls Testing Plan
 - Controls Testing
 - Performance Verification Testing
- o. Exterior Improvements
- p. Signs and Pavement Markings
- q. O&M Training for County staff
- r. Site Cleanup – Remove SEC Measures
- s. Pre-Final Inspection
- t. Correction of Punchlist items
- u. Final Inspection

- E. County Activities: County and other agency activities that could impact progress shall be shown. These activities include, but are not limited to approvals, design reviews, environmental permit reviews by State regulators, inspections, Government Furnished Equipment, and Notice to Proceed for phasing requirements.
- F. Responsibility: All activities shall be identified in the schedule by the party responsible to perform the work. Responsibility includes, but is not limited to, the subcontracting firm, contractor work force, or government agency performing a given task. Activities shall not belong to more than one responsible party. The responsible party for each activity shall be identified by the Responsibility Code.

- G. Work Areas: All activities shall be identified in the schedule by the work area in which the activity occurs. Activities shall not be allowed to cover more than one work area. The work area for each activity shall be identified by the Work Area Code.
- H. Modification Number: Any activity that is added or changed by contract modification or used to justify claimed time shall be identified by a mod or claim code that changed the activity. Activities shall not belong to more than one modification or claim item. Whenever possible, changes shall be added to the schedule by adding new activities.
- I. Bid or Phase Item: All activities shall be identified in the schedule by the bid item or phase in which the activity belongs. Activities shall not contain work in more than one bid or phase item. The bid item or phase or work of each activity shall be identified by the Bid Item Code and Phase of Work Code respectively.
- J. Scheduled Project Completion. The schedule interval shall extend from Notice to Proceed to the Contract Completion Date.
1. *Project Start Date*: The schedule shall start no earlier than the date on which NTP was acknowledged. The Contractor shall include as the first activity in the project schedule an activity called “Start Project”.
 2. *Constraint of Last Activity*: Completion of the last activity in the schedule shall be constrained by the Contract completion date. Calculation on project updates shall be such that if the early finish of the last activity falls after the Contract completion date, the float calculation shall reflect a negative float on the critical path. The Contractor shall include as the last activity in the project schedule an activity called “End Project”. The “End Project” activity shall have an “LF” constraint equal to the contract completion date for the Project, and a zero day duration.
 3. *Early Project Completion*: In the event the project schedule shows completion of the project prior to the Contract completion date, the Contractor shall identify those activities that have been accelerated and/or those activities that are scheduled in parallel to support the Contractor’s “early” completion. The Contractor shall specifically address each of the activities noted in the narrative report at every project schedule update period to assist the Contracting Officer’s Representative in evaluating the Contractor’s ability to actually complete prior to the Contract period.
- K. Default Progress Data Disallowed: Actual Start and Finish Dates shall NOT be automatically updated by default mechanisms that may be included in CPM scheduling software systems. Actual Start and Finish Dates on the CPM schedule shall match those dates provided from daily progress reports. Failure of the Contractor to document the Actual Start and Finish Dates on the daily report for every in-progress or completed activity, and failure to ensure that the data contained on the daily report is the sole basis for schedule updating shall result in the disapproval of the schedule and the inability of the Contracting Officer’s Representative to evaluate Contractor progress for payment purposes. Updating of the percent complete and the remaining duration of any activity shall be independent functions. Program features which calculate one of these parameters from the other shall be disabled.
- L. Out-of-Sequence Progress: Activities that have posted progress without all preceding logic being satisfied (Out-of-Sequence Progress) will be allowed only on a case-by-case approval of the Contracting Officer’s Representative. The Contractor shall propose logic corrections to eliminate all out of sequence progress or justify not changing the sequencing for approval prior to submitting an updated project schedule.

- M. Negative Lags: Lag durations contained in the project schedule shall NOT have a negative value.
- N. CPM Submission Requirements: The following items shall be submitted by the Contractor for the preliminary submission, initial submission, and every periodic update throughout the life of the Project:
1. A USB drive containing the project schedule shall be provided, with a transmittal sheet indicating the type of schedule (preliminary, initial, update or change), contract number, data date name, and telephone number of person responsible for the schedule data. In lieu of a USB drive, a signed PDF copy may be emailed to the COTR.
 2. Narrative Report: A Narrative Report shall be provided with the preliminary, initial and each update of the project schedule. This report shall be provided as the basis of the Contractor's progress payment request. The Narrative Report is expected to relay to the County the Contractor's thorough analysis of the schedule output and its plans to compensate for any problems, either current or potential, which are revealed through that analysis. The Narrative Report shall include:
 - a. a description of activities along the critical path,
 - b. a description of current and anticipated problem areas or delaying factors and their impact; and
 - c. an explanation of corrective actions taken or required to be taken.
 3. Approved Changes Verification: Only project schedule changes that have been previously approved by the Contracting Officer's Representative shall be included in the schedule submission. The Narrative Report shall specifically reference, on an activity by activity basis, all changes made since the previous period and relate each change to documented, approved schedule changes.

7. SPECIAL CONTRACT REQUIREMENTS

7.1. BID SURETY

A BID BOND IS REQUIRED FOR THIS SOLICITATION.

Each bid must be accompanied by a Certified Copy of the Bid Bond from a Surety Company acceptable to the County and authorized to do business in the State of Maryland, properly executed in favor of the Commissioners of St. Mary's County for not less than five (5) percent of the amount representing the bid or sum total noted in the Proposal Form.

- A. When a bid guarantee is required by the Invitation for Bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for the opening of bids, shall be cause for the rejection of bids.
- B. A bid guarantee shall be a firm commitment by the surety for the issuance of Contract Bonds required to award this contract. Bid guarantees, other than Bid Bonds, will be returned.
- C. If the successful bidder, upon acceptance of its bid by the County within the period specified therein for acceptance (120 days if no period is specified) fails to execute such further Contractual documents, if any, and give the Bond(s) as may be required by the terms of the bid (as accepted within the time specified) after receipt of the request by the Contractor shall be liable for any cost of procuring the Work which exceeds the amount of the successful Contractor's bid, and the bid guarantee shall be available for offsetting such difference.

7.2. PERFORMANCE AND PAYMENT BONDS

PERFORMANCE AND PAYMENT BONDS ARE REQUIRED FOR CONTRACT AWARD.

- A. The successful Bidder shall be required to deliver to the County a Performance Bond and a Payment Bond, properly executed by a Surety Company acceptable to the County and authorized to do business in the State of Maryland, each in the amount of one hundred percent (100%) of the respective Contract amount.
- B. The Contractor shall, within 15 days of the date of Notice-of-Intent-to-Award, execute and deliver to the County the Performance and Payment Bonds; satisfactory evidence of all insurance coverage required under this Contract and by Law, and proof satisfactory to the County of the authority of the person or persons executing the Contract and the Performance and Payment Bonds before a Contract will be validated by the County. A Contract shall not be binding upon the bid opening until it has been validated by the County and a copy of such fully validated Contract is delivered to the Contractor.
- C. Failure upon the part of the Contractor to execute and deliver Certificate(s) of Insurance and Performance and Payment Bonds within 15 days after Notice of Intent to Award, shall be just cause for the forfeiture of the bid guaranty to the County, which forfeiture shall be considered not as a penalty, but in liquidation of damages sustained. Award may then, at the sole discretion of the County, be made to the next lowest responsive, responsible Bidder or all bids may be rejected, and the solicitation re-advertised.

7.3. ADDITIONAL BOND SECURITY

If any Surety upon any Bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer, or if any such Surety fails to furnish reports as to its financial condition from time to time as requested by the County, or if the Contract price is increased to such an extent that the penal sum of any Bond becomes inadequate, in the opinion of the Contracting Officer, the Contractor shall furnish promptly such additional security as may be required to protect the interests of the County and of persons supplying labor or materials in the prosecution of the Work specified by this Contract. Failure to do so shall constitute grounds for Termination for Default.

7.4. INSURANCE REQUIREMENTS

The Contractor shall be required to maintain, in force, insurance as described below and approved by the County for the duration of the Contract. Insurance coverage shall be a Contract specific or occurrence-based policy. The Contractor's Insurance Coverage shall be primary for any claims related to this Contract. **Claims Made policies are not acceptable for General Liability and Automobile Liability Insurance.** Proof of acceptable insurance shall be required prior to Contract award and shall be maintained in full force for duration of Contract. Contractor shall provide a complete copy of any policy including any endorsements and related documents via PDF if requested. The policies shall stipulate that the insurance coverage shall not be changed or canceled unless the insured and the Contracting Officer are notified in writing. **Commissioners of St. Mary's County, in the State of Maryland, shall be named as an additional insured for Commercial General Liability and Automobile Liability Coverage.** Contractor shall indemnify, defend, and hold harmless the Commissioners of St. Mary's County, for any and all liability, claims, expenses, lawsuits, etc., arising from this Contract.

Insurance policies must be acceptable to the Contracting Officer and placed with companies that have an A.M. Best minimum Rating of A, Class VII or better. Insurers must be authorized to do business under the laws of the State of Maryland.

7.4.1. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY INSURANCE

At a minimum, the Contractor shall carry the Statutory Limits of Workers' Compensation Insurance required under the laws of the State of Maryland, and Employer's Liability Insurance with limits of at least \$500,000 per accident for Bodily Injury by Accident and \$500,000 policy limit/\$500,000 each employee for Bodily Injury by Disease.

7.4.2. AUTOMOBILE LIABILITY INSURANCE

The Contractor shall purchase and maintain during the life of this Contract, the proper amount of comprehensive automobile liability insurance in the amount of no less than \$1,000,000 per accident for each owned, non-owned, and hired vehicle that is used in any way to complete the Work, as required under the laws of the State of Maryland whether vehicle is registered in Maryland or not.

7.4.3. COMMERCIAL GENERAL LIABILITY REQUIREMENTS

The Contractor shall purchase and maintain during the life of this Contract the following Commercial General Liability insurance coverage to include all Subcontractors with limits no less than:

- A. \$2,000,000.00 Annual Aggregate
- B. \$1,000,000.00 Per Occurrence
- C. \$1,000,000.00 Products and Completed Operations.
- D. \$1,000,000.00 Personal and Advertising Injury.

7.4.4. UMBRELLA LIABILITY COVERAGE

\$2,000,000.00 Per Occurrence

7.4.5. SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall also require all first-tier Subcontractors who will perform work under this Contract to procure and maintain Maryland statutory limits of Workers' Compensation insurance. The Contractor shall furnish the Contracting Officer's Representative satisfactory evidence of Subcontractors' Insurance PRIOR to the Subcontractor starting work.

7.4.6. COMMERCIAL GENERAL LIABILITY REQUIREMENTS

The Contractor shall purchase and maintain during the life of this Contract the following Commercial General Liability insurance coverage to include all Subcontractors with limits no less than:

- A. \$2,000,000.00 Annual Aggregate
- B. \$1,000,000.00 Per Occurrence
- C. \$1,000,000.00 Products and Completed Operations.
- D. \$1,000,000.00 Personal and Advertising Injury.

7.4.7. UMBRELLA LIABILITY COVERAGE

\$2,000,000.00 Per Occurrence

7.4.8. SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall also require all first-tier Subcontractors who will perform work under this Contract to procure and maintain Maryland statutory limits of Workers' Compensation insurance. The Contractor shall furnish the Contracting Officer's Representative satisfactory evidence of Subcontractors' Insurance PRIOR to the Subcontractor starting work.

7.5. CERTIFIED COPIES

Certified copies of all insurance policies or certification of such insurance shall be delivered to the Contracting Officer within fifteen (15) calendar days after the Notice-of-Intent to Award letter has been received. All such insurance policies shall be kept in full force and effect by the Contractor during the Contract term, including any contract extensions or option years.

7.6. OPTION FOR INCREASED QUANTITY

The County may increase the quantity of any numbered line item identified in the schedule at the unit price specified. The Contracting Officer may exercise the Option by written notice to the Contractor within the period specified in the Schedule. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties otherwise agree.

7.7. DIFFERING SITE CONDITIONS

- A. The Contractor shall immediately, and before the conditions are disturbed, give a written notice to the COR of:
 - 1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract or;
 - 2. Unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- B. The COR shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changes as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly before any further work concerning the site conditions may proceed.
- C. No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed unless the Contractor has given the written notice required.
- D. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

7.8. INSPECTION OF SUPPLIES

- A. Definition. "Supplies" as used in this Clause, Inspection of Supplies, includes but is not limited to raw materials, components, intermediate assemblies, and products and supplies by lots.
- B. The Contractor shall provide and maintain an inspection system acceptable to the County covering supplies under this Contract and shall tender to the County for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with Contract requirements.
- C. The County has the right to inspect and test all supplies called for by the Contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance.
- D. The County has the right either to reject or require correction of non-conforming when they are defective in material or workmanship or are otherwise not in conformity with Contract requirements. The County may reject non-conforming supplies with or without disposition conforming supplies instructions. The Contractor shall remove supplies rejected or required to be corrected. However, the COR may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing corrective action taken.
- E. The County shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the Contract. County failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the County for non-conforming supplies.

F. Inspections and tests by the County do not relieve the Contractor of responsibility for defects or other failures to meet Contract requirements discovered before acceptance. Acceptance shall be conclusive except for latent defects, fraud, or as otherwise provided in the Contract.

G. If acceptance is not conclusive for any of the reasons in paragraph H-8.D above, the County, in addition to any other rights and remedies provided by law or any other provisions of this Contract, shall have the right to require the Contractor:

A. At no increase in Contract price, to correct or replace the defective or non-conforming supplies at the original point of delivery or at the Contractor's plant at the COR's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the COR. The Contracting Officer may require a reduction in Contract price if the Contractor fails to meet such delivery schedule; or

B. Within a reasonable time after receipt by the Contractor of notice of defects or non-conformance, to repay such portion of the Contract as is equitable under the circumstances, if the COR elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs. If the Contractor fails to perform or act as required in H-8.D and H-8.E above, and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the COR specifying such failure, the County has the right to Contract or otherwise replace or correct such supplies and charge the Contractor with the cost occasioned thereby.

7.9. INSPECTION OF CONSTRUCTION

A. In this Clause, the term "work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

B. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the County. All work shall be conducted under the general direction of the Contracting Officer and is subject to County inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

C. County inspections and tests are for the sole benefit of the County and do not:

1. Relieve the Contractor of responsibility for providing adequate quality control measures,
2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance,
3. Constitute or imply acceptance, or
4. Affect the continuing rights of the County after acceptance of the completed work under the paragraphs below,

D. The presence or absence of a County Inspector does not relieve the Contractor from any contract requirement, nor is the Inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

- E. The Contractor shall furnish promptly, without any additional charge, all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The County may charge to the Contractor any additional costs of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or re-test necessary. The County shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special full-size and performance tests shall be performed if and as described in the Contract.
- F. The Contractor shall, without charge, replace or correct work found by the County not to conform to the Contract requirements, unless in the public interest the County consents to accept the Work with an appropriate adjustment in contract price. The Contractor shall segregate and remove promptly rejected material from the premises.
- G. If the Contractor does not replace or correct rejected work promptly, the County may;
 - 1. By contract or otherwise replace or correct the work and charge the cost to the Contractor, or
 - 2. Terminate for Default the Contractor's right to proceed.
- H. If, before acceptance of the entire Work, the County decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall furnish promptly all necessary facilities, labor and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or Subcontractors, the Contractor shall defray the expenses of the examination and satisfactory reconstruction. However, if the work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if the completion of the work was thereby delayed, an extension of time.
- I. Unless otherwise specified in the Contract, the County shall accept, as promptly as practicable after completion and inspection, all work required by the Contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the County's rights under any warranty or guarantee.

7.10. INSPECTION OF SERVICES

- A. Definitions. "Services" as used in this Section, Inspection of Services, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the COR during Contract performance.
- C. The County has the right to inspect and test all services called for by the Contract at times and places practicable, during the term of the Contract. County inspections and tests shall not unduly delay the Work.
- D. If any of the services do not conform to Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in Contract amount. When the defects in services cannot be corrected by re-performance, the County may:
 - A. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements, and

- B. Reduce the Contract price to reflect the reduced value of the services performed.
- E. If the Contractor fails to perform promptly the services again or take the necessary action to ensure future performance in conformity with Contract requirements, the County may:
 - A. By contract or otherwise perform the services and charge the Contractor any cost incurred by the County that is directly related to performance of such service, or
 - B. Terminate the Contract for default.

7.11. SPECIFICATIONS AND PROJECT DRAWINGS

- A. The Contractor shall keep on the Work site a copy of the Project Drawings and Specifications and shall at all times give the COR access thereto. Anything mentioned in the Specifications and not shown on the Project Drawings, and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Project Drawings and Specifications, the Specifications shall govern. In case of a discrepancy in the figures in the Project Drawings or in the Specifications, the matter shall be submitted promptly to the COR who shall make a prompt decision in writing by the Contracting Officer. Any adjustment by the Contractor without such a determination shall be at its own risk and expense.
 - 1. Whenever in the Specifications or upon the Project Drawings the words "directed", "required", "ordered", "designated", "prescribed" or understood that the "direction", "requirement", "order", "designation", or "prescription" of the COR is intended and, similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean "satisfactory to" the COR unless otherwise expressly stated.
 - 2. Where "as shown", "as indicated", "as detailed" or words of similar import are used, it shall be understood that the reference is made to the Project Drawings accompanying this Contract unless stated otherwise. The work "provided" as used herein shall mean "provide complete in place" that is furnished and installed.
- B. "Shop drawings" as shown in Section [DEFINITIONS](#), are further defined to mean drawings submitted to the County by the Contractor, Subcontractor, any lower tier Subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (form, fit and attachment details) of materials or equipment. If includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract.
 - 1. If this Contract requires shop drawings, the Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the COR without evidence of the Contractor's approval shall be returned for resubmission. The COR will indicate an approval or disapproval of the shop drawings and, if not approved as submitted, shall indicate the County's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the COR shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract.
 - 2. If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If any such variation is approved,

the Contracting Officer shall issue an appropriate contract modification. If the variation is minor or does not involve a change in scope of work, price or in time of performance, a modification need not be issued.

- C. This clause shall apply to all Subcontractors at any tier.

7.12. USE AND POSSESSION PRIOR TO COMPLETION

- A. The County shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, the COR shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that the County intends to take possession of or use. However, failure of the COR to list any item of work shall not relieve the Contractor of responsibility of complying with the terms of the Contract. The County's possession or use shall not be deemed an acceptance of any work under the Contract.
- B. While the County has such possession or use, the Contractor shall be relieved of the responsibility for loss or damage to the Work resulting from the County's possession or use, notwithstanding the terms of the section entitled "Permits & Responsibilities". If prior possession or use by the County delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

7.13. NATIONAL FISH AND WILDLIFE FOUNDATION / OFFICE OF MANAGEMENT AND BUDGET (NFWF/OMB) Agreement Clauses

Contract must adhere to the additional requirements of NFWF/OMB grantor / federal clauses are included as Exhibit J-15.

8. CONTRACT CLAUSES

8.1. ASSIGNMENT OF CLAIMS

- A. The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution. The assignee under such an assignment may further assign its right under the original assignment to any type of financing institution.
- B. Any assignment or reassignment under this Clause shall cover all unpaid amounts payable under this Contract, and shall not be made to more than one party, except, that the one party to whom assignment or reassignment is made may act as agent or trustee for two or more parties participating in the financing of this Contract.

8.2. ASSIGNMENT OF RISK

The Contractor shall bear all **RISK OF LOSS** with respect to all materials, improvements, and property until final acceptance, by the County, of the Work.

8.3. CHANGES

- A. The Contracting Officer may at any time by written order and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
1. Market Conditions.

2. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the County in accordance with drawings, designs, or specifications.
 3. Method of shipment or packing.
 4. Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, whether or not changed by the order, the Contracting Officer shall make equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- C. The Contractor must submit any "proposal for adjustment" under this Clause written 30 days from the date of receipt of the written order.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes Clause. However, nothing in this Clause shall excuse the Contractor from proceeding with the Contract as changed.
- E. No proposal by the Contractor for an equitable adjustment will be allowed if asserted after Final Payment under this Contract.

8.4. CLAIMS

Indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workman's Compensation acts, disability benefit acts or other employee benefits acts with respect to any and all claims against the County or any of their agents or employees or any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

8.5. CODES

The Contractor must meet all applicable Federal EPA, OSHA and MDE guidelines for the Work performed and Services provided under this Contract. The Contractor's work shall conform to all applicable Manufacturers Specifications, in addition to any applicable federal, state, local, and other prevailing Codes, Laws, Rules and Regulations governing the Work.

The Contractor shall save, indemnify, and hold harmless the County, its agents and employees, from all damages, penalties, suits, judgments, and/or accidents which may occur from not following the above-mentioned codes, laws, rules, and regulations.

8.6. COMMERCIAL WARRANTY CLAUSE

The Contractor agrees that the supplies or services furnished under this Contract shall be covered by the most favorable commercial Warranties the Contractor gives to any customer for such supplies or services, and that the rights and remedies provided are in addition to and do not limit any rights afforded to the County by any other clause of this Contract.

8.7. CONTINGENT FEES

- A. The Contractor warrants that no person or agency has been employed or retained to solicit this Contract upon an agreement or understanding for a contingent fee except a bona fide employee or agency. For breach or violation of this warranty, the County shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or otherwise recover the full amount of the contingent fee.

- B. "Bona fide Agency" as used in this clause means an established commercial or selling agency maintained by a Contractor for the purpose of securing business, that neither exerts or proposes to exert improper influence to solicit or obtain County contracts nor holds itself out as being able to obtain any County contract through improper influence.
- C. "Bona fide Employee" as used in this clause means a person employed by a Contractor and subject to the Contractor's supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain County contracts nor holds out as being able to obtain any County contract through improper influence.
- D. "Contingent Fee" as used in this clause means any commission, percentage brokerage or other fee that is contingent upon the success that a person or concern has in securing a County contract.
- E. "Improper Influence" as used in this clause means any influence that induces a county employee to give consideration or to act regarding a County contract on any basis other than the merits of the matter.

8.8. CONTRACTOR INSPECTION REQUIREMENTS

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this Contract conform to Contract requirements, including any technical requirements for specified manufacturers' parts. This Clause takes precedence over any County inspection and testing required in the Contract's specifications, except for specialized inspections or tests specified to be performed solely by the County.

8.9. COPYRIGHTS

The Contractor shall pay all royalties/license fees which may be due to the inclusion of any copyrighted materials, methods, or systems selected by the Contractor. The Contractor shall indemnify and hold harmless the County, its agents and employees, from all suits or claims for infringement of any copyrights arising out of such selection.

8.10. COUNTY-FURNISHED PROPERTY

- A. The County shall deliver to the Contractor, for use only in connection with this Contract, the property described in the Schedule or Specifications, at the times and locations stated therein. If the County-furnished property, suitable for its intended use, is not so delivered to the Contractor, and, if the facts warrant such action, the Contracting Officer may equitably adjust any affected provision of this Contract pursuant to the provisions of the "Changes" clause.
- B. Title to County-furnished property shall remain with the County. The Contractor shall maintain adequate property control records of the property furnished by the County in accordance with sound industrial practice.
- C. Unless otherwise provided in the Contract, the Contractor, upon delivery to them of any County-furnished property, assumes the risk of, and shall be responsible for, any loss or damage except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of the Contract.
- D. The Contractor shall, upon completion of this Contract, prepare for shipment or dispose of all County-furnished property not consumed in the performance of this Contract, as may be directed or authorized by the Contracting Officer. If not delivered to the County, the net proceeds of any disposal shall be credited to the Contract price or paid in such other manner as the Contracting Officer may direct.

8.11. COUNTY TERMINATION FOR CONVENIENCE

- A. The County may terminate performance of the Work under this Contract in whole, or, from time to time, in part, if the Contracting Officer determines that a termination is in the County's best interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of terminations and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall proceed immediately with the following obligations, regardless of any delay in determining any amounts due under this Clause:
 - 1. Stop Work as specified in the Notice of Termination.
 - 2. Place no further subcontracts or Orders (referred to as subcontracts in this Clause) for materials, services, or facilities, except as necessary to complete the continued portion of this Contract.
 - 3. Terminate all subcontracts to the extent they relate to the Work terminated.
 - 4. Assign to the County, as directed by the Contracting Officer, all right, title, and interest of the Contract under the subcontracts terminated, in which case the County shall have the right to settle or to pay any termination settlement proposals arising out of those terminations.
 - 5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities arising from the termination of subcontracts; the approval of ratification will be final for purposes of this Clause.
 - 6. As directed by the Contracting Officer, transfer title and deliver to the County parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated, and the completed or partially completed plans, drawings, information, and other property that, if the Contract had been complete, would be required to be furnished to the County,
 - 7. Complete performance of the Work not terminated.
 - 8. Take any action that may be necessary or that the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the County has or may acquire an interest.
 - 9. Use your best efforts to sell, as directed by the Contracting Officer, any property of the types referred to in subparagraph (6) above. The proceeds of any disposition will be applied to reduce any payments to be made by the County under this Contract.
- C. The Contractor shall submit a list to the Contracting Officer, certified as to quantity and quality, of termination inventory not previously disposed. Within fifteen (15) calendar days, the County will accept title to those items and either remove them or enter into a storage agreement with the Contractor.
- D. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than thirty (30) days from the effective date of the Termination Notice. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine the amount due to the Contractor and shall pay the amount determined.

- E. The Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, but the agreed amount shall not exceed the total Contract price as reduced by the amount of previous payments and the Contract price of the Work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount.
- F. If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of Termination of Work, the Contracting Officer shall pay the Contractor the amount determined as follows, but without duplication of any amount agreed upon under paragraph E above:
 - 1. For Contract Work performed before the effective date of Termination, the total (without duplication of any items) of the cost of this Work; the cost of settling and paying any settlement proposals under subcontracts that are properly chargeable to the terminated portion of the Contract; and a sum as profit on the above, determined by the Contracting Officer to be fair and reasonable. However, if it appears that the Contractor would have suffered loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
 - 2. The reasonable costs of settlement of the Work terminated, including:
 - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of Termination Settlement Proposals and supporting data;
 - b. The Termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c. Storage and transportation, and other costs incurred which are reasonably necessary for the preservation, protection, or disposition of the Termination inventory.
- G. Except to the extent that the County expressly assumed the **RISK OF LOSS**, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph F, above, the fair market, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the County or to a buyer.
- H. Generally accepted accounting procedures and principles shall govern all costs claimed, agreed to, or determined under this Clause.
- I. Contractor shall have the right to appeal under the “Disputes” clause, from any determination made by the Contracting Officer under paragraph D or F above;
- J. Except that if the Contractor failed to submit the Termination Settlement Proposal within the time provided in paragraph D above, and failed to request a time extension, there is no right to appeal.
- K. In arriving at the amount due to the Contractor under this Clause, there shall be deducted:
 - 1. All un-liquidated payments to the Contractor under the terminated portion of this Contract;
 - 2. Any claim which the County has against the Contractor under this Contract;
 - 3. The agreed price for the sale of materials, supplies, or other assets acquired by the Contractor under this Contract is not recovered by or credited to the County.

- L. If the Termination is partial, the Contractor may file a Proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the Contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any Proposal shall be requested by the Contractor within ninety (90) calendar days from the effective date of the Termination, unless extended by the Contracting Officer.
- M. Unless otherwise provided in this Contract, the Contractor shall maintain all records and documents related to the Termination portion of this Contract for three (3) years after final settlement. During that time, the Contractor shall make these records and documents available to the County, at the office of the Contractor, at no additional charge to the County.

8.12. DEFAULT

- A. The County may, subject to paragraph C and D below, by written notice of Default to the Contractor, terminate the Contract in whole or in part if the Contractor fails to:
 - 1. Deliver the supplies or to perform the service within the time specified in the Contract or any extension;
 - 2. Make progress to endanger performance of this Contract;
 - 3. Perform any of the other provisions of this Contract.The County's right to terminate this Contract under sub-paragraphs (2) and (3) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- B. If the County terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies, or services. However, the Contractor will continue the Work not terminated.
- C. Except for defaults of Subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such clauses include acts of God; acts of the County in either its sovereign or contractual capacity; fires, strikes; freight embargoes; or unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Contractor to meet the required delivery schedule.
- E. If this Contract is terminated for Default, the County may require the Contractor to transfer title and deliver to the County, as directed by the Contracting Officer, any completed or partially completed supplies and materials, parts, tools, plans, drawings, information and contract rights (collectively referred to as "manufacturing and materials" in this Clause) that the Contractor has specifically produced or acquired for the Terminated portion of this Contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the County has an interest.
- F. The County shall pay Contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for component materials delivered and

accepted. Failure to agree shall be a Dispute under Dispute Clause. The County may withhold from amounts to be paid, any sum the Contracting Officer determines to be necessary to protect the County against loss because of outstanding liens or claims of former lien holders.

- G. If, after Termination, it is determined that the Contractor was not in Default, or that the Default was excusable, the rights and obligations of the parties shall be the same as if the Termination had been issued for the Convenience of the County.
- H. The rights and remedies of the County in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

8.13. DEFAULT, TERMINATION FOR

- A. If the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will insure the completion within the time specified in this Contract, including any extension or fails to complete the Work within this time, the County may, by written notice to the Contractor, Terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the County may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the Work site necessary for completing the Work. The Contractor and its sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by the County in completing the Work.
- B. The Contractor's right to proceed shall not be Terminated nor the Contractor charged with damages under this Clause if:
 - 1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:
 - a. Acts of God or the public enemy;
 - b. Contractual capacity.
 - c. Acts of another Contractor in the performance of a Contract with the County;
 - d. Fires;
 - e. Floods;
 - f. Epidemics;
 - g. Quarantine restrictions;
 - h. Strikes;
 - i. Freight embargoes;
 - j. Unusually severe weather; or
 - k. Delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractor or suppliers; and

2. The Contractor, within 10 days from the beginning of any delay, notifies the Contracting Officer in writing of the causes of the delay. The Contracting Officer shall ascertain the facts and extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes Clause.
3. If, after Termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Termination had been issued for the convenience of the County.
4. The rights and remedies of the County in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

8.14. DISPUTES

- A. Except as otherwise provided in this Contract, any Dispute concerning a question of fact arising under this Contract, which is not disposed of by agreement, shall be decided by the Contracting Officer and shall be final and conclusive unless within 30 days from the receipt of such Decision the Contractor furnishes to the Contracting Officer a written appeal addressed to the Procurement Officer. The Decision of the Procurement Officer or a duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall limit Judicial review of any such Decisions in cases where fraud by such Official or the representative of such Official is alleged; provided, however, that any such Decision shall be final and conclusive unless the same is fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.
- B. Pending final decision of a Dispute, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision.
- C. This "Disputes" clause does not preclude consideration of questions of law in connection with Decisions provided for in paragraph A above. Nothing in this Contract, however, shall be construed as making final the Decision of any Administrative Official or representative on a question of law.

8.15. EQUAL OPPORTUNITY

During the performance of this Contract, the Contractor certifies that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information, marital status, or ancestry and that this policy shall be included in all solicitations or advertisements for employees during the term of this Contract.

8.16. EXTRAS

Except as otherwise provided for in this contract, no payment for Extras shall be made unless such Extras and the price have been authorized in writing by the Contracting Officer.

8.17. FEDERAL, STATE, AND LOCAL TAXES

- A. Except as may be otherwise provided in this Contract, the Contract price includes all applicable federal, state, and local taxes and duties. The Contractor, and not the County, shall be responsible for payment of all taxes, including sales and use taxes that are imposed on the Contractor. The Contractor understands that the County is

exempt from taxes and that the Contractor is not entitled to the benefit of, and cannot claim exemption under, any tax exemption to which the County is entitled.

- B. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, except as provided at subpart C below, if a statute, court decision, written ruling, or regulation takes effect after the Contract Date, and:
 - 1. Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property as of the Contract date, the Contract price shall be increased by the amount of such tax or duty or rate increase actually paid by the Contractor, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - 2. Results in the Contractor not being required to pay any such Federal excise tax or duty which would otherwise have been payable on such transactions or property as of the Contract date or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief refund, or drawback, or that amount shall be paid to the County. The Contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the County, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- C. Paragraph B above shall not be applicable to social security taxes or to any other employment tax.
- D. No adjustment of less than \$100 shall be made in the Contract price pursuant to paragraph B above.
- E. As used in paragraph B above, the term "Contract Date" means the date set for bid opening, or if this is a negotiated contract, the Contract Date. As to additional supplies or services procured by modification to this Contract, the term "Contract Date" means the date of such modification.
- F. The Contractor shall promptly notify the County of matters which will result in either an increase or decrease in the Contract Price and shall act with respect to change as directed by the County.

8.18. GRATUITIES

- A. The right of the Contractor to proceed may be suspended by written notice if, after notice and hearing, the Procurement Officer or a designee determines that the Contractor, their agent or representative:
 - 1. Offered or gave a gratuity (entertainment or gift) to an Officer, Official or employee of the County.
 - 2. Intended by the gratuity to obtain a contract or favorable treatment under a contract.
- B. The facts supporting this determination may be reviewed by any St. Mary's County Court with appropriate jurisdiction.

8.19. GRATUITIES, TERMINATION FOR

- A. The County may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found, after notice and hearing, by the Procurement Office that Gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any Officer or Employees of the County with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to

the performance of such Contract; provided that the existence of the facts upon which such findings are made shall be in issue and may be reviewed in any competent Court.

- B. In the event this Contract is terminated as provided in paragraph A above, the County shall be entitled:
1. To pursue the same remedies against the Contractor as it could pursue in the event of breach of the Contract by the Contractor, and;
 2. As a penalty in addition to any other damages to which it may be entitled by Law, to exemplary damages in an amount which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing such Gratuities to any such Officer and Employee.
- C. The rights and remedies of the County provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by Law or under this Contract.

8.20. HAZARDOUS MATERIALS

The Contractor shall handle, store, transport, use and dispose of hazardous materials in compliance with Federal and State Hazardous Waste Laws, Rules, and Regulations.

The Contractor retains ownership of all hazardous materials generated from their work and shall be solely responsible for the cleanup of any contamination resulting from spills or mishandling. The Contractor shall also be responsible for reporting of any such spills as mandated by federal, state and local laws.

The hazardous materials must be packaged and labeled according to applicable regulations.

8.21. INDEMNIFICATION

To the extent allowed by law, Contractor agrees to now, and forever, release, indemnify, discharge, and hold harmless on behalf of itself, its partners, agents, affiliates, subcontractors, employees, and assigns, the Commissioners of St. Mary's County, and their employees, agents, and officials, from any and all claims, liabilities, suits, damages, costs (including reasonable attorneys' fees), demands, expenses, or causes of action of any kind, which are in any way related to this Contract, including any such claims which allege negligent acts or omissions, bodily injury, death, property damage, but excluding such claims which originate from the grossly negligent acts or willful misconduct of the County.

8.22. INDEFINITE QUANTITY

- A. If this is an Indefinite Quantity Contract for the supplies or services specified and effective for the period stated in the Contract, delivery or performance shall be made only by Purchase Orders issued in accordance with the "Ordering" clause. The Contractor shall furnish to the County, when and if ordered, the supplies or services specified in the solicitation.
- B. There is no limit on the number of purchase orders that may be issued. The County may issue purchase orders requiring delivery to multiple destinations or performance at multiple locations.
- C. Any purchase order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and the County's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period, provided that the Contractor shall not be required to make any deliveries under this Contract after ninety (90) days after the end date of the Contract.

8.23. INDEPENDENT PRICING

THE OFFEROR CERTIFIES that:

- A. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to these prices;
- B. The prices in this offer have not been nor will be disclosed knowingly directly or indirectly to any other offeror or competitor before bid opening or Contract award unless otherwise required by Law; and
- C. No attempt has been made or will be made by the Offeror to induce any other concern or individual to submit or not to submit an offer for the purpose of restricting competition.

8.24. LATE BIDS, MODIFICATIONS OR WITHDRAWAL OF BIDS

- A. Any Bid received at the office designated in the Solicitation after the exact time specified for receipt will not be considered unless:
 - 1. It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for Bid receipt, or
 - 2. It was sent by mail and the County determines that late receipt was due solely to mishandling by the County after it was received.
 - 3. The only acceptable evidence to establish mailing date of a dated Bid, modification, or withdrawal is a postmark (exclusive of a postage meter) legibly affixed by an employee of the U.S. Postal Service.
- B. Any modification or withdrawal of Bids is subject to the same conditions as in paragraph A above. A Bid may be withdrawn by a Bidder or authorized representative but only if the withdrawal is made prior to the exact time set for the receipt and opening of Bids.

8.25. NO INDIVIDUAL LIABILITY

No elected official, appointed official, employee, servant, agent, or law enforcement officer shall be held personally liable under this Contract and any extension or renewals thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

8.26. NON-HIRING OF STATE/COUNTY EMPLOYEES

No employee of the State of Maryland, County, or any unit thereof, whose duties include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the Offeror.

8.27. NOTICE OF AMBIGUITIES

- A. This written Contract and all identified writings or documents incorporated by reference or physically attached constitute the parties' complete agreement and no other prior or contemporaneous agreements either written or oral shall be considered to change, modify, or contradict it. Any ambiguity in the Contract will not be strictly construed against the drafter of the Contract language but shall be resolved by applying the most reasonable interpretation under the circumstances, considering the intentions of the parties at the time of contracting.
- B. It shall be the obligation of the Contractor to exercise due diligence to discover and to bring to the attention of the COR at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts in or between the specifications and the applicable drawings or other documents incorporated by reference. Failure to comply with

such obligation shall be deemed a waiver and release of all claims for extra costs or delays arising out of such ambiguities, discrepancies, inconsistencies, and conflicts.

8.28. OFFICIALS NOT TO BENEFIT

No County Commissioner or other Elected Official of St. Mary's County shall be admitted to any share or part of this Contract or to any benefit arising from it. However, this clause does not apply to this Contract to the extent this Contract is made with a corporation for the corporation's general benefit provided the Official is not a major shareholder.

8.29. OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. The County may extend the term of this Contract by written notice to the Contractor within the time specified in the Schedule; provided that the County shall give the Contractor a preliminary written notice of its intention to extend at least 60 days before the Contract expires. The preliminary notice does not commit the County to an extension.
- B. If the County exercises this Option, the extended Contract shall be considered to include this Option provision.
- C. The total duration of this Contract, including the exercises of any Options under this Clause shall not exceed sixty (60) months.

8.30. OTHER CONTRACTS

The County may undertake or award other contracts for work at or near the site of the Work performed under this Contract. The Contractor shall fully cooperate with the other contractors and with County employees on site. The Contractor shall carefully adapt the scheduling and performance of the Work, heeding any directions provided by COR. The Contractor shall not commit or permit any act that will interfere with the performance of work by other contractors or by County employees.

8.31. PATENT RIGHTS

- A. Whenever any article, material, appliance, process, composition, combination, means, or thing called for in these specifications is covered by letters and patent, the successful Contractor must secure, before using or employing, such article, material, appliance, process, composition, combinations, means or thing, the assent in writing of the owner or licensee of such letters patent and file the same with the Contracting Officer.
- B. The Contractor shall be responsible for any claim made against the County, its agents and employees for any actual or alleged infringement of patents, by the use of any such patented articles, materials, appliances, etc., in the performance and completion of the Work, and shall save harmless and indemnify the County, its agents and employees from all costs, expenses and damages, including solicitors' and attorneys' fees, which the County may be obligated to pay for reason of any actual or alleged infringement of patents in the performance and completion of the Work herein specified.

8.32. PAYMENTS

The County shall pay the Contractor upon the submission of proper invoices or vouchers, the prices stipulated in the Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided for in this Contract. Unless otherwise specified in this Contract, payment shall be made on partial deliveries accepted by the County if:

- A. Amount due on the deliveries warrants it; or

- B. Contractor requests it and the amount due on the deliveries is at least \$1,500 or 50% of the total Contract price.

8.33. PERMITS & RESPONSIBILITIES

- A. The Contractor shall, without additional expense to the County, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state, local or municipal laws, Codes and Regulations applicable to the performance of the Work. The Contractor shall also be responsible for all damages to persons or property that occur because of the Contractor's fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others.
- B. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit or Work which may have been accepted under the Contract.

8.34. SEVERABILITY

In the event that any portion of this Solicitation/Contract is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the County to sever only the invalid portion or provision, and that the remainder of the Solicitation/Contract shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Solicitation/Contract, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the County in entering into this Solicitation/Contract.

8.35. SOVEREIGN IMMUNITY

By entering this Contract, the County, and its "employees", as defined in the Local Government Tort Claims Act, §5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, do not waive sovereign immunity, do not waive any defenses, and do not waive any limitations of liability as may be provided for by Law. No provision of this Contract modifies or waives any provision of the Local Government Tort Claims Act.

8.36. SPECIFICATION INTERPRETATION

Should any misunderstanding arise as to the meaning of anything contained in the specifications, the decision of the Contracting Officer shall be final and binding. Any errors or omissions in the specifications may be corrected by the Contracting Officer when such corrections are necessary for the proper fulfillment of the intent of the specifications as construed by them. In all cases of doubt as to the true meaning of the specifications, the decision of the Contracting Officer shall be final and binding upon all parties to this document and their employees, agents, and contractors.

8.37. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

Any Subcontractors and outside Associates and Consultants required by the Contractor in connection with the services covered by this Contract will be limited to individuals or firms that were specifically identified as part of the bid submission. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, Associates, or Consultants.

8.38. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS

It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of their contractual duties to any other person, firm, or corporation, without the previous written consent of the Contracting Officer. If the Contractor desires to assign their right to payment of the Contract, the Contractor shall notify the Contracting Officer immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from their obligations or change the terms of the Contract.

8.39. SUFFICIENT APPROPRIATIONS

The County's financial obligations, if any, under this Contract are contingent upon sufficient appropriations and authorization being made by the County for the performance of this Contract. The County's decision as to whether sufficient appropriations are available shall be accepted by the other party or parties to this Contract and shall be final.

8.40. SUSPENSION OF WORK

The Contracting Officer may order the Contractor, in writing, to suspend all or any part of the Work for such period of time as may be determined by the Contracting Officer as appropriate for the convenience of the County.

8.41. THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this Solicitation/Contract that it is not intended by any of the provisions of this Contract to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations in this Contract without the written consent of the County and notwithstanding its concurrence in or approval of the award of any Contract or Subcontract or the Solicitation thereof in fulfilling the obligations of this Contract.

8.42. VARIANCE BETWEEN PLANS AND SPECIFICATIONS

- A. In the event of variance between plans and/or specifications and this Invitation for Bids (IFB), on any particular item or note, it shall be the duty of the Contractor to call it to the COR's attention and obtain their interpretation of the discrepancy. This IFB is the basis for the formulation of plans and specifications. Any deviation from these programmatic requirements requires written direction from the Contracting Officer. However, there are certain operations and material necessary for the construction of a complete job, and unless they are of an unusual nature, no mention thereof shall be made.
- B. Should discrepancies, ambiguities, omissions, or conflicts occur in or between drawings or specifications involving a price differential, the General Contractor or Subcontractor shall be deemed to have estimated on the more expensive way of doing the work involved.

8.43. VENUE AND JURISDICTION

This Solicitation/Contract shall be governed by the laws of the State of Maryland without giving effect to any laws of the State that would cause the application of another jurisdiction's laws. The venue for actions is fixed in the Circuit Court for St. Mary's County, Maryland.

8.44. USE OF CONTRACT(S) BY OTHER GOVERNMENT ENTITIES

The County has bid this Contract with the intent for cooperative use by other jurisdictions:

- A. If authorized by the bidder(s), resultant Contract(s) may be extended to any or all entities, other than the County, as designated by the bidder to purchase at contract prices in accordance with contract terms.
- B. Any government entity utilizing such Contract(s) will place its own order(s) directly with the successful Contractor. There shall be no obligation on the part of any participating government entities to utilize the Contract(s).
- C. It is the awarded vendor's responsibility to notify other entities of the availability of the Contract(s).
- D. Any entity exercising its right to use this Contract shall execute a separate Contract with the awardee. Such Contracts may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under required Comprehensive General Liability policies, and venue.

- E. If, when preparing such a Contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The County shall not be liable in any way whatsoever for any actions or inactions of another entity as a result of any award extended to that jurisdiction by the awardee.

9. LIST OF ATTACHMENTS

9.1. PROJECT DOCUMENTS

The Documents for this Project includes this solicitation, the project drawings, construction and material specifications, special provisions shown below, and all subsequent written amendments:

J-7 State of Maryland, Department of the Environment, Water and Science Administration, Water Quality Certification, 23-WQC-0003, Effective date: October 18, 2023.

J-8 State of Maryland, Department of the Environment, Marsh Maintenance Plan, Tidal Wetlands License No. 22-WL-0760.

J-9 State of Maryland Board of Public Works Wetlands License NO. 22-0760

J-10 Department of the Army, U. S. Army Corps of Engineers, Individual Permit: NAB-2022-61194-M30 (Piney Point Lighthouse/Living Shoreline)

J-11 Pier/Bulkhead/Groin/Revetment/Boatlift/Piling Permit, St. Mary's County: No. BEN25-0153

J-12 Pier/Bulkhead/Groin/Revetment/Boatlift/Piling Placard, St. Mary's County: No. BEN25-0153

J-13 Material Specification and Guidelines: Piney Point Lighthouse & Museum Living Shoreline Project.

J-14 Construction Drawings – Piney Point Lighthouse Living Shoreline Project, St. Mary's County, Final-Approved, October 10, 2023.

J-15 NFWF Agreement Clauses

10. REPRESENTATIONS AND INSTRUCTIONS

10.1. BIDDER QUALIFICATION

Bidder must be a responsible bidder and must satisfactorily prove to the County, that they have adequate resources to perform all requirements of this Contract in the event of award, and that services will be available in a manner required for performance of a resulting contract.

The County reserves the right to inspect the bidder's place of operations and equipment prior to award. Bidder must be able to prove they have sufficient financial capacity, manpower, tools, equipment, materials, etc. to complete Contract.

Prospective bidder should not be excluded from receiving a Federal Award in the Federal System for Award management. (UEI # should be supplied prior to Award for verification on Attachment **J-1**.)

10.2. REPRESENTATION, CERTIFICATION, AND OTHER STATEMENT OF OFFEROR

The Representations and Certifications Form shall be completed and submitted with the bid proposal.

Prospective bidder must be in good standing with the State of Maryland, Department of Assessments & Taxation (SDAT.)

10.3. VENDOR REGISTRATION

If selected bidder is not already registered as an active vendor in the County Vendor Database, the Contractor shall be required to complete and submit a Vendor Information Form with a properly completed Internal Revenue Service W-9 form attached. Bidders must also register with State of Maryland on the eMaryland Marketplace Advantage, <https://emma.maryland.gov> and provide their Vendor Number on the Representations and Certifications Form.

If the bidder is not registered and does not have an active vendor number, prospective bidder may still submit an offer. However, all required registrations must be completed prior to award of any contract.

Failure to complete and provide proof of required registrations may be basis for rejection of bid if it is not supplied to County within fifteen (15) days from notice of intent to award.

10.4. COMPLIANCE WITH APPLICABLE LAW

Contractors are expected to be familiar with and comply with all federal, state, and local laws, ordinances, codes, and regulations that may in any way affect the service offered. Ignorance on the part of the Contractor will in no way relieve it from their responsibility for compliance.

The Offeror hereby represents and warrants that:

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

10.5. BIDDER'S REFERENCE SHEET

Bidders are requested to provide references which are similar in size and scope to the Scope of Work described in [SCOPE OF WORK](#).

At least three (3) references within the last five (5) years of similar experience should be provided.

Bidders who fail to provide required references may be considered non-responsive.

11. INSTRUCTIONS, CONDITIONS, AND NOTICES OFFEROR

11.1. INSTRUCTIONS, CONDITIONS, AND NOTICES OFFEROR

11.1.1. TIMELINE

Any inquiries regarding this solicitation must be submitted directly to the Procurement Office through the OpenGov eProcurement platform at <https://procurement.opengov.com/portal/stmaryscountymd>.

All interested bidders must register in advance via the County's eProcurement Portal RSVP Manager at least 90 minutes prior to the Virtual Pre-Bid Meeting, Site Visit, and Virtual Bid Opening. Firms that have registered timely will receive participation instructions. If multiple attendees will be attending the meeting, please have each individual complete the RSVP Manager process.

Solicitation Timeline: (subject to change by formal Amendment)

Date Posted:	July 29, 2025
Pre-Bid Meeting (Non-Mandatory):	August 6, 2025, 10:00am Virtual
Site Visit:	August 7, 2025, 10:00am
Questions Due:	August 11, 2025, 12:00pm
Final Questions Due:	September 3, 2025, 12:00pm
Sealed Bids Due:	September 19, 2025, 3:00pm
Virtual Bid Opening:	September 19, 2025, 3:05pm

11.1.2. Late Bids

Bids arriving after the time and date designated for the bid submission shown in the Timeline will NOT be accepted.

11.1.3. Bid Submittals

Bidders are required to bid all items of this Solicitation. All bids shall include, at a minimum:

- Bid Surety: Bid Bond valued at 5% of the bid amount
- Signed Contract Form
- Completed Price Proposal
- Representations and Certifications Form
- Vendor Information Form with signed IRS Form W-9
- Bidder's Reference Sheet
- St. Mary's County Government Sub Contractors List (if applicable)

11.1.4. Bid Opening Abstract

St. Mary's County Office of Procurement will provide a Bid Opening Abstract to interested parties who request one at tory.digregorio@stmaryscountymd.gov following a public Bid Opening. An Official Bid Tally may be requested, in writing, and will be provided following the completion of the Procurement process. No Information will be provided verbally.

11.1.5. Contract Agreement

The Solicitation and all ancillary documents, exhibits, drawings, specifications, etc., in conjunction with the accepted bid, proposal forms, affidavits and attachments shall become the Contract agreement between Contractor and St. Mary's County Government.

12. EVALUATION FACTORS FOR AWARD

12.1. EVALUATION FACTORS

A. AWARD OF CONTRACT

The County intends to award one Contract to the lowest responsive and responsible bidder(s) for the Total Base Bid amount shown on the Cost Proposal.

Contract award may be contingent upon Grantor approval, including the receipt and acceptance of grant funding.

B. REJECTION OF QUOTES/BIDS/PROPOSALS

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following causes, may be sufficient for the disqualification of a Bidder and the rejection of its bid:

1. Evidence of collusion among Bidders.
2. Lack of competency revealed by financial statements, experience, equipment statements, or other factors.
3. Lack of responsibility as shown by past work, judged from the standpoint of workmanship as submitted, or from previous experience with the Bidder.
4. Default on a previous similar contract for failure to perform.
5. Being delinquent in payments due to the County or State.
6. Exceptions or exclusions to the requirements of the solicitation.
7. Failure to be in "Good Standing" with the State of Maryland at the time of award.
8. Active exclusion in the Federal System for Award Management.
9. Previously documented substandard performance on a County contract.
10. Failure to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the offeror is unable or unlikely to fulfil the requirements.
11. Failure to furnish information requested by the County.

The County reserves the right to reject any/all bids without explanation, to waive or cure irregularities and/or informalities in any bid, and to make an award in any manner, consistent with law, deemed in the best interest of the County.

13. VENDOR RESPONSES

13.1. VENDOR QUESTIONNAIRE

1. Download Complete and Sign Contract Form*

Please download the Contract Form, complete, and upload.

Contract Form Boxes 15-16 must be completed and the form must be signed in Box 17. Upload signed form here.

- [143770 Contract Form.pdf](#)

*Response required

2. Bid Bond(s)*

Bond(s) should be valued at 5% of the bid amount. Upload PDF of Certified Bid Bond here.

*Response required

3. Representations and Certifications*

Please download the below documents, complete, and upload.

- [REPRESENTATIONS AND CERTIFL...](#)

*Response required

4. Bidder's Reference Sheet*

Please download the below documents, complete, and upload.

- [BIDDER'S REFERENCE SHEET.docx](#)

*Response required

5. Vendor Information Form*

Please download the below documents, complete, and upload.

- [VENDOR INFORMATION FORM.docx](#)

*Response required

6. Subcontractor's List*

Please download the below documents, complete, and upload.

- [SUBCONTRACTOR'S LIST.docx](#)

*Response required