

EXHIBIT 2

ST. MARY'S COLLEGE OF MARYLAND SUPPLEMENTARY CONDITIONS

CONSTRUCTION

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1. PROCUREMENT OFFICER

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

2. TAX EXEMPTION

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

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

3. COLLEGE SECURITY PROVISIONS

All security requirements established by the College for its facilities shall become a part of these specifications, and it shall be the vendor's responsibility to comply with these security provisions. All crimes and emergencies that occur on the campus are to be reported to the Office of Public Safety at (240) 895-4911.

4. COLLEGE POLICIES, RULES AND REGULATIONS

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

5. PRE-EXISTING REGULATIONS

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

6. MARYLAND LAW PREVAILS

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

7. QUALIFICATIONS

By submitting a bid, the vendor certifies and affirms that it has the knowledge, experience, skills, equipment, and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project.

8. QUALIFICATION TO DO BUSINESS IN THE STATE OF MARYLAND

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

9. REGISTRATION

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

10. LICENSES, REGISTRATION AND QUALIFICATIONS

The Contractor must be licensed as required by the laws of the State of Maryland as applicable to the performance of work under this Contract. See, e.g., Md. Bus. Reg. code Ann., title 8 and Title 17, subtitle 6. All work performed by the Contractor shall conform to all State and local codes and ordinances and such other statutory provisions that pertain to this class of work. Such codes, rules, regulations, and local ordinances are to be considered part of these specifications. The College reserves the right to require that the Contractor demonstrate that it has the skills, equipment, and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project. The College has the option of requiring all personnel working on this contract to have copies of their license/registration forms on file with the Purchasing Agent at the college.

11. COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time-to-time hereafter, may be necessary to remain so qualified.

.2 It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.

.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

.4 IT shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

12. ETHICS

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

13. EMPLOYEE CONDUCT

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

14. RETENTION OF RECORDS

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

15. DISSEMINATION OF INFORMATION

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

16. IDENTIFICATION OF CONTRACT DELIVERABLES

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

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

17. CONTINGENT FEE PROHIBITION

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

18. DRUG FREE AND ALCOHOL-FREE WORKPLACE

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

19. SUBCONTRACTING, ASSIGNMENT

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

20. COMPLIANCE WITH ADA

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

21. EPA COMPLIANCE

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

22. OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)

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

23. FEDERAL LOBBYING PROHIBITION

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

24. FINANCIAL DISCLOSURE

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

25. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contractor was awarded; and (b) if the

contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

26. NON-DISCRIMINATION IN EMPLOYMENT

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

27. COMMERCIAL NON-DISCRIMINATION CLAUSE

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

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

B. As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor to each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

28. AFFIRMATIVE ACTION NOTICE

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

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

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

29. NON-HIRING OF OFFICIALS AND EMPLOYEES

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

30. ARREARAGES

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

31. PAYMENT OF STATE OBLIGATIONS

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

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

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

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

The State is not liable for interest:

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

(2) On any amount representing unpaid interest.

Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

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

Invoices shall contain the following information: Contract Number, Purchase Order Number and Contractor's Federal ID number or Social Security Number, and other information as specified by the Procurement Officer. Each contract line-item number (CLIN) will have assigned to it a Purchase Order Number. Invoices **MUST** show the correct Purchase Order number for the items being billed. Failure to provide proper Purchase Order number will cause delays in the payment process and is cause for rejection of invoice. Invoices shall be mailed to:

Accounts Payable
St. Mary's College of Maryland
418952 E. Fisher Road
St. Mary's City, MD 20686-3001

For information regarding billing please call (240) 895-4238 or 4308
Accounts Payable Fax Number: (240) 895-4916

32. SET-OFF

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

33. BANKRUPTCY

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

34. ANTI-BRIBERY

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

35. COST AND PRICE CERTIFICATION

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

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

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

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

36. OWNERSHIP OF DOCUMENTS, EQUIPMENT AND MATERIALS

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

.2 Third party: Indemnification. If Contractor obtains or uses for purposes of this Contract or any subcontracts any design, device, material, process, or work covered by patent, copyright, or trademark, Contractor shall ensure the College is licensed to possess and to use such design, device, material, process, or work. Contractor shall indemnify the State, the College and their officials, agents, and employees with respect to any claim, action, cost, or judgment for patent, trademark, or copyright infringement, arising out of the possession or use of any design, device, material, process, supplies, equipment, services, or other work covered by this Contract.

37. RESPONSIBILITY OF CONTRACTOR

Contractor shall perform the services with that standard of care, skill, and diligence normally provide by a contractor in the performance of similar services. If Contractor fails to perform the services, and such failure is made known to Contractor within two years after expiration of this Agreement, it shall, if required by the College, perform at its own expense and without additional cost to the College, those services necessary for the correction of any deficiencies or damage resulting from Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the College.

38. DISPUTES

.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this Disputes clause and in accordance with SMCM Procurement Policies and Procedures, Section 8, "Protest and Appeals."

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

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

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

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

39. BID, PERFORMANCE AND PAYMENT BONDS

.1 **Bid, Performance and Payment bonds are required when the amount of the bid, including base bid and any alternates, is in excess of \$100,000.** (Attachment No. 2)

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

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

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

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

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

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

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

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

40. CONTRACTOR'S REQUIRED INSURANCE

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

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

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

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

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

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

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

.6 Food projects liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,00 for each person and \$2,000,000 for each accident.

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

.3 Each insurance policy shall contain the following endorsements: *"It is understood and agreed that the Insurance Company shall notify in writing the Procurement Officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy."* A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished to the Procurement Officer. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of Contract award, the requested Certificates and Policies shall be delivered to the Procurement Officer within ten (10) days of award of contract. Notices of policy changes shall be furnished to the Procurement Officer.

41. INDEMNIFICATION

.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the College and the Architect and their agents, employees, officers and their agents, employees, officers, and trustees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage or loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or Suppliers at any tier to perform any requirement of the Contractor by any negligent act or omission on the part of the Contractor, its Subcontractors or Suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Clause.

.2 In any and all claims against the College or the Architect or any of their agents, employees, officers, or trustees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable, the indemnification obligation under this Clause 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 or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

.3 The College has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract, against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract. The College has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Purchasing Agent by phone with a follow-up in writing within two days of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the contractor's obligations under the Contract. The contractor will cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the Contractor's performance under this Contract.

42. NON-EXCLUSIVE CONTRACT AND NO ASSURANCES OF WORK

The parties acknowledge and agree that this Contract is not exclusive, and that the College may purchase the same or similar goods and services from other vendors. Further, the Contractor acknowledges that it has received no assurances of any minimum amount or type of work or any minimum amount of compensation under this Contract.

43. REPRESENTATION

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

44. ELECTRONIC TRANSACTIONS

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

45. NOTICES

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

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

All notices for the Contractor will be sent to:

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

46. BID/PROPOSAL AFFIDAVIT BY CONTRACTOR

All terms and conditions of the Bid/Proposal Affidavit, attached as Attachment No.4, are made a part of this contract.

47. MINORITY BUSINESS PARTICIPATION

An overall MBE subcontractor participation goal of **10%** of the total Contract dollar amount has been established for this procurement. MBE subgoal for Women Owned businesses is **3%**.

48. MBE LIQUIDATED DAMAGES

The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provision. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue because of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

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

.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): **\$22.71** per day until the monthly report is submitted as required.

.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$22.71 per week per MBE subcontractor.

.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling or changing the scope or work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm of the Contract.

.4 Failure to meet the Contractor’s total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

.5 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: **\$54.82** per day until the undisputed amount due to the MBE subcontractor is paid.

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

49. INCORPORATION BY REFERENCE

The General Conditions of the Contract between St. Mary's College of Maryland and the Contractor (Attachment No.5), all terms and conditions of this solicitation, any appendices and amendments thereto, and the Contract/Bid Affidavits signed by the Vendor and returned with the bid are all incorporated by reference into any contract, and subsequent purchase orders resulting from this IFB.

50. LIQUIDATED DAMAGES

In accordance with section 7.12 C (1) of the General Conditions, liquidated damages shall be assessed at **\$500.** for each day that the work shall be uncompleted after the contract completion date, as may be extended through a Change Order.

51. FIXED OR UNIFORM PRICE

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

52. ENTIRE AGREEMENT

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

(End of Supplementary Conditions)