

Larry Hogan
Governor

Boyd K. Rutherford
Lt Governor



Ellington E. Churchill, Jr.
Secretary

Nelson E. Reichart
Deputy Secretary

OFFICE OF STATE PROCUREMENT

Exhibit 1

TERMS AND CONDITIONS

1. INCORPORATION BY REFERENCE:

All terms and conditions of the solicitation and amendments thereto are made a part of this Contract.

2. TAX EXEMPTION:

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

3. SPECIFICATIONS:

All materials, equipment, supplies or services shall conform to applicable federal and State laws and regulations and to the specifications contained in this solicitation.

4. DELIVERY AND ACCEPTANCE:

Delivery shall be made in accordance with the solicitation specifications. The State, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The State unilaterally may order in writing the suspension, delay or interruption of performance hereunder. The State reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market.

5. ANTIBRIBERY:

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its 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 of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.



6. 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 shall be registered with the State Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 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. The website for the State Department of Assessments and Taxation is <http://www.dat.state.md.us>, e-mail address is charterhelp@dat.state.md.us, and phone numbers for the State Department of Assessments and Taxation are: (410) 767-1340 or (888) 246-5941.

7. EPA COMPLIANCE:

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

8. OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):

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.

9. DISPUTES; NO ELECTRONIC PROTESTS, NOTICES OF CLAIM, OR CLAIMS:

This Contract shall be subject to the provisions of Title 15, Subtitle 2 of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR.21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

In accordance with COMAR 21.10.02.02 the Department will not accept protests, notices of claim, or claims by any electronic means (including by facsimile or email).

10. MARYLAND LAW PREVAILS:

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

11. PAYMENT OF STATE OBLIGATIONS:

Electronic Funds Transfer: This provision on Electronic Funds Transfer applies to contracts of over \$200,000 for which payments are made through the State Comptroller. Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. By submitting a response to this solicitation, the Bidder or Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. After award of a contract, the selected Bidder or offeror shall register with the Comptroller of Maryland using the forms required by the Comptroller. For further information go to:

<http://compnet.comp.state.md.us/gad/vendorinfo/eft/default.asp>

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

12. PRE-EXISTING REGULATIONS:

The regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

13. INDEMNIFICATION:

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

14. CONFLICTING TERMS:

Any proposal for terms in addition to or different from those set forth in this purchase order or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

15. DRUG 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 this purchase order.

16. CHANGES; WORK ORDERS:

Changes: The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be an order, make any change in the work within the general scope of the contract, including but not limited to changes:

In the specifications (including drawings and designs);
In the method or manner of performance of the work;
In the State-furnished facilities, equipment, materials, services, or site; or Directing acceleration in performance or delivery.

Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the Procurement Officer that causes or constitutes any such change shall be treated as a change order under this clause provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

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

Subject to paragraph (6) of this subsection, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the contract, whether or not changed by an order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any order under (2) above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any

increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this section, he shall do so in accordance with and subject to the disputes procedures of the contract.

Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the contract budget or total cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the contract is adjusted to permit its completion within the project budget.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment is made under this contract.

As used in this section, "work" means any and all commodities, goods, materials, labor, services, manner or time of delivery or performance, or other elements of performance required to be furnished or supplied by the Contractor under this contract.

Miscellaneous: In the event of a dispute between the Department and the Contractor as to whether any work is included in the scope of the contract such that the Contractor would be obligated to provide that work at no additional cost to the State, the Procurement Officer may order the Contractor under this section to perform the work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefore in accordance with contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a "change order," does not necessarily constitute a change in the scope of the contract or in the work required under the contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the contract otherwise requires the Contractor to perform as stated in the order.

Upon receipt of a signed written order of the Procurement Officer under this section, the Contractor shall comply with the order promptly, within the requirements of the required completion or delivery time, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the contract and grounds for termination for default or any other remedy available to the State.

The State may issue a unilateral order on the State's terms (including a promise to pay the Contractor a "not to exceed" ("NTE") amount) which the Contractor may then dispute in accordance with the disputes procedures of the contract. Pending resolution of such a dispute, Contractor must proceed diligently with performance of the contract as ordered by the Procurement Officer.

The terms “not to exceed” and “NTE” when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

17. BID / PROPOSAL AFFIDAVIT:

Each Bidder or offeror shall execute and attach to the bid or proposal the affidavit included with this solicitation.

18. PUBLIC INFORMATION ACT NOTICE:

Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

19. MINORITY BUSINESS ENTERPRISE NOTICE:

Minority Business Enterprises are encouraged to respond to this solicitation.

20. 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.

21. MULTIPLE OR ALTERNATE BIDS:

Unless multiple or alternate bids are requested in the solicitation, multiple or alternate bids may not be accepted. If the solicitation does not request multiple or alternate bids, if received they will be treated in accordance with COMAR 21.05.02.21.

22. BPO AS CONTRACT:

This provision applies to all procurement contracts procured by the Department of General Services except contracts for the procurement of architectural and engineering services for a price of greater than \$200,000.

As used in this provision, a bid refers to a bid submitted under competitive sealed bidding and to an offer submitted under competitive sealed proposals.

As used in this provision, a Bidder refers to a Bidder under competitive sealed bidding and to an offeror under competitive sealed proposals.

As used in this provision, a solicitation means an invitation to bid, a request for proposals, or any other document requesting bids or proposals for procurement by the Department.

The Bidder's execution and submission of a responsive bid constitutes a promise by the Bidder to perform the contract solicited by the Department in accordance with the terms and conditions stated in the solicitation. The bid shall be irrevocable for the period stated in the solicitation or for such longer period as the Bidder and the Department may agree.

Upon acceptance of a bid, the Procurement Officer may issue a Blanket Purchase Order (BPO), in a form to be determined by the Department, to the Bidder accepting the bid and binding the Bidder to a contract. The execution and issuance of a BPO by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the contract. The contract of the parties will be embodied in the contract documents, which shall consist of the executed BPO of the Procurement Officer, including all documents, terms, and conditions incorporated into those documents by the terms of the solicitation, the BPO, the bid, or by operation of law, and the executed bid of the Bidder. If the Procurement Officer issues a BPO, at the option of the Procurement Officer it will not be necessary for the Bidder to execute the BPO or any other form of contract or agreement. The Procurement Officer may require that the parties both execute a single document as the embodiment of the contract between the parties.

In the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in the following order, those of:

The BPO; then
The solicitation;
and then The bid.

23. RETURNED GOODS:

Contractor(s) shall be entitled to recover reasonable compensation for any and all goods shipped in accordance with authorized agency orders, meeting all contract requirements, and returned by the agency for reasons other than the Contractor's failure to meet contract requirements. Compensation shall be limited to actual unreimbursed costs incurred by the Contractor including, but not limited to, restocking charges, shipping charges, plus reasonable profit. Contractor must provide written proof of claimed compensation. A return of goods covered by this section shall be deemed a partial termination for convenience as to the returned goods, and other contract provisions and principles applicable to a partial termination for convenience shall apply.

24. PURCHASES BY OTHER ENTITIES – INDEFINITE QUANTITIES CONTRACT:

Maryland State and local entities as defined in Finance and Procurement 13-110(a)(5)(i) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract under the same terms and conditions and at the same prices chargeable to the State. All such purchases (a) constitute contracts between the Contractor and the purchasing entity and will not constitute purchases by the State or State agencies under the Contract or be binding or enforceable against the State or any State agency and (b) may be subject to other terms and conditions agreed to by the Contractor and the purchasing entity. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity. Maryland State and local entities as defined in Finance and Procurement 13-110(a)(5)(i) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract under the same terms and conditions and at the same prices chargeable to the State. All such purchases (a) constitute contracts between the Contractor and the purchasing entity and will not constitute purchases by the State or State agencies under the Contract or be binding or enforceable against the State or any State agency and (b) may be subject to other terms and conditions agreed to by the Contractor and the purchasing entity. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

CONTRACTOR

DocuSigned by:
Todd Loccisano
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By

Todd Loccisano, VP - Contract Management
(Printed Name and Title)

12/22/2020 | 7:19 PM MST
Date

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES

By

Robert G. Gleason, Chief Procurement Officer
(Printed Name and Title)

2/3/2021
Date

Approved as to form and legal sufficiency

this day of February, 2021
Howard J. Barr
Digitally signed by
Howard J. Barr
Date: 2020.12.23
11:49:31 -05'00'
Assistant Attorney General