REQUEST FOR QUALIFICATIONS

Morgan State University
Energy Performance Contract
RFQ-MSU2020

ISSUED BY: Maryland Clean Energy Center
5000 College Avenue, Suite 31010
College Park, MD 20740

RFQ NUMBER: MSU2020
RELEASE DATE: Monday, August 10, 2020
PRE-QUALIFICATIONS SUBMITTAL CONFERENCE: None
SITE VISITS: None
QUESTIONS DUE: Wednesday, August 19, 2020 @ 4:00 p.m.
QUALIFICATIONS SUBMITTAL DUE DATE: Monday, September 14, 2020 @ 11:00 a.m.
ANTICIPATED AWARD DATE: Monday, September 28, 2020
PROCUREMENT OFFICER: Wyatt Shiflett, Director of Finance Programs
Maryland Clean Energy Center
CONTRACT MONITOR: Premdat Kokilepersaud
Director, Energy Management & Sustainability
Morgan State University

MBE SUBCONTRACTING GOAL: 30%

DIRECT INQUIRIES TO: Wyatt Shiflett, Director of Finance Programs
Maryland Clean Energy Center
E-mail: wshiflett@mdcleanenergy.org

Vendors are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Bidder’s Qualifications Submittal unacceptable and subject to rejection. Questions and inquiries may be addressed as outlined in Section 3.2 of this solicitation. Any exceptions to MCEC terms and conditions are not binding unless they are negotiated and affirmatively deemed mutually agreeable by the Vendor and MCEC in an executed contract. MCEC is not required to negotiate changes to its terms and conditions.
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ATTACHMENT A – Qualifications Submittal Affidavit.

ATTACHMENTS B and C were intentionally deleted.

ATTACHMENTS D – Minority Business Enterprise Forms.

ATTACHMENT E – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement.

ATTACHMENT F – Conflict of Interest Affidavit and Disclosure.

ATTACHMENT G – Non-Disclosure Agreement.

ATTACHMENT H – Mercury Affidavit.

ATTACHMENT I – Location of the Performance of Services Disclosure.

ATTACHMENT J – Contract (Master Services Agreement).

ATTACHMENT K – Contract Affidavit.

ATTACHMENT L – Department of Human Resources (DHR) Hiring Agreement.

ATTACHMENT M – Performance Evaluation Form (Vendor’s Performance Evaluation)

ATTACHMENT N – Abbreviations and Definitions
PART I: OVERVIEW

1.0 Introduction. The Maryland Clean Energy Center (MCEC), a body politic and corporate and a public instrumentality of the State of Maryland, created by the General Assembly with a statute-directed mission to advance clean energy and energy efficiency products, services, and technologies as part of a specific economic development strategy. MCEC is excited to be working with Morgan State University (MSU) to facilitate the advancement of energy efficiency projects on the MSU campus. The purpose of this RFQ MSU2020 (RFQ) is to select one Energy Services Company (Vendor) to enter into a Master Services Agreement with MCEC to deliver cost effective energy savings and generation solutions at the MSU campus. It is envisioned that the Master Services Agreement will be for an initial term of [five years] with the possibility of five one-year annual extensions to the initial term, unless terminated sooner by MCEC.

Only companies who are qualified under the Maryland Department of General Services Indefinite Delivery Contract I.D. No. EPC-IDC-8.0 (IDC) will be permitted to respond to this RFQ. All terms of the IDC, unless specifically excluded in this RFQ, the Master Services Agreement, a Task Order, or any contract related to the Master Services Agreement, apply to this RFQ, the Master Services Agreement, and each project and contract undertaken under the terms of the Master Services Agreement.

This RFQ is a qualifications-based request, and does not seek pricing or energy savings for the Initial Task. A single energy services company will be selected as the Vendor based upon the qualifications and information provided set forth in this RFQ.

Currently, MSU plans to develop a comprehensive campus-wide energy efficiency and generation plan that will be developed in multiple phases. Each identified project (a Task) will be undertaken as a separate Task under the Master Services Agreement. There is no guarantee that any Task will be identified under the Master Services Agreement.

When a specific Task is identified, the Vendor will submit a Phase I proposal to MCEC. If MCEC accepts the Phase I proposal, the Vendor will enter into a Phase I contract with MCEC for a Phase I—Preliminary Development and Design for the Task. If the Phase I findings are acceptable to MCEC and MSU, the Vendor and MCEC will enter into an Energy Performance Contract (Phase II Contract) to develop the identified Task. Sureties, Phase III, MBE requirements, vendor requirements, and contracts will be consistent, unless otherwise stated, with the IDC.

1.2 Bidder Qualification. Only energy services companies qualified to perform Energy Performance Contracts under the Maryland Department of General Services Indefinite Delivery Contract I.D. No. EPC-IDC-8.0 are invited to respond to this RFQ (Bidders).

The requirements in this RFQ supersede those specified in IDC. If no change has been made per this RFQ, the Master Services Agreement, a Task Order, or any contract related to the Master Services Agreement, the requirements, terms, and conditions of IDC will apply to this RFQ and the subsequent project development.

1.3 Background.

MCEC

The Maryland Clean Energy Center (MCEC) is a body politic and corporate and a public instrumentality of the State created by the General Assembly with a statute-directed mission to
advance clean energy and energy efficiency products, services, and technologies as part of a specific economic development strategy.

**Morgan State University**

Morgan State University, a coeducational institution, serves an average of 7,700 students in programs from the baccalaureate level through the doctorate. The campus covers an area of more than 143 acres in a residential section of Baltimore, Maryland. Approximately 2,000 students are housed on campus in four traditional residence halls, two high rise buildings and three apartment complexes.

By action of the Maryland Legislature, the University has been designated as Maryland's Preeminent Public Urban Research University, with the responsibility of addressing the needs of residents, schools, and organizations within the Baltimore Metropolitan Area.

Morgan attracts students from each state and many foreign countries. About 35% of all students enrolled at Morgan are from outside the State of Maryland. It is one of the leading institutions nationally in the number of applications received from African-American high school graduates. The largest sources of its enrollments outside of Maryland are New York, New Jersey, and Pennsylvania.

The University has a comprehensive undergraduate curriculum with more specialized offerings at the master's and doctoral levels. Morgan traditionally has placed strong emphasis on the arts and sciences at the undergraduate level and on the preparation of students for advanced study. In addition, it offers a variety of programs in professional fields, including engineering, business, teacher education, architecture, hospitality management and social work.

While Morgan is a historically black institution, it has served students of all racial and ethnic backgrounds. Its mission today is to enroll a student body that is diverse in its socioeconomic and academic status and to provide the full-range of experiences and services that permits it to successfully serve students with a wide variety of goals and needs.

The University awards more bachelor's degrees to African-American students than any campus in Maryland. In many fields, but particularly in engineering and the sciences, Morgan accounts for large percentages of degrees received by African-Americans from Maryland institutions. An above-average percentage of Morgan graduates enter graduate and professional school. Historically, the University has ranked among the top public campuses nationally in the number of black graduates receiving doctorates.
PART II: SCOPE OF SERVICES

2.0 Scope of Services. Currently, MSU plans to develop a comprehensive campus-wide energy efficiency and generation plan that will be developed in multiple phases. Each identified Task will be undertaken as a separate Task under the Master Services Agreement. There is no guarantee that any Task will be identified under the Master Services Agreement. When a specific Task is identified, the Vendor will submit a Phase I proposal to MCEC. If MCEC accepts the Phase I proposal, the Vendor will enter into a Phase I contract with MCEC for a Phase I—Preliminary Development and Design for the Task. If the Phase I findings are acceptable to MCEC and MSU, the Vendor and MCEC will enter into an Energy Performance Contract (Phase II Contract) to develop the identified Task. Sureties, Phase III, MBE requirements, vendor requirements, and contracts will be consistent, unless otherwise stated, with the IDC.

The expected Initial Task under the Master Service Agreement is a modest EPC project renovating select buildings at MSU. The purpose of this initial Task is to demonstrate energy savings necessary to justify the capital investment. A detailed cash flow analysis demonstrating the return on investment for all Tasks is to be performed by the Vendor. The IGA is a Phase I as provided in the IDC. It is expected that the Initial Task will require a 15 year project term. Subsequent Tasks would involve a holistic campus-wide approach to facilities improvement related to MSU energy infrastructure.

Expected Initial Task

HVAC, Lighting, Plumbing, Values, Piping and Building Envelope improvements are contemplated at McKeldin Center, Banneker Hall, Hurt Gymnasium, Morgan Commons and the Central Heating Plant. Campus-wide exterior lighting upgrades and the installation of utility submeters at the majority of building on campus are included in the project scope of the Initial Task.

- The following buildings and project scope are be evaluated for development within an Energy Performance Contract

<table>
<thead>
<tr>
<th>Item #</th>
<th>Buildings</th>
<th>Systems</th>
<th>Comments / Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>McKeldin Center</td>
<td>HVAC</td>
<td>Upgrade pneumatic controls to DDC; aged motor control center (MCC) and components need to be replaced; aged mechanical &amp; electrical components need to be replaced.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lighting</td>
<td>Upgrade to energy efficient fixtures and controls</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plumbing</td>
<td>Aged components need to be replaced</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valves &amp; Piping</td>
<td>Inspect, replace, and reinsulate as necessary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Building</td>
<td>Leaking roof and drains; bird control is needed; exterior walls are defaced from bird droppings</td>
</tr>
<tr>
<td>A-2</td>
<td>Banneker Hall</td>
<td>HVAC</td>
<td>Comprehensive recommissioning of the system</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lighting</td>
<td>Upgrade to energy efficient fixtures; check existing controls for functionality</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plumbing</td>
<td>Recommission and check for proper functionality</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valves &amp; Piping</td>
<td>Check sequencing; reinsulate as necessary</td>
</tr>
<tr>
<td>Area</td>
<td>Building</td>
<td>Task Description</td>
<td></td>
</tr>
<tr>
<td>----------</td>
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<td>----------------------------------------------------------------------------------</td>
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<tr>
<td>A-3</td>
<td>Hurt Gymnasium</td>
<td><strong>HVAC</strong> Upgrade obsolete pneumatic &amp; DDC controls; add AC to the Gymnasium Units (3&amp;4); repair or replace components of the motor control center (MCC); aged mechanical &amp; electrical components need to be replaced or repaired; enhance capacity of the pool's steam converter to accelerate heating of the pool's water; add redundancy pump for the pool.</td>
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<tr>
<td></td>
<td></td>
<td><strong>Lighting</strong> Upgrade to energy efficient fixtures and controls</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Plumbing</strong> Recommission and check for proper functionality</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Valve &amp; Piping</strong> Replace all valve and piping; reinsulate</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Building</strong> Leaking roof and drains; first floor suffers from flash flooding; replace floor of Gymnasium</td>
<td></td>
</tr>
<tr>
<td>A-4</td>
<td>Morgan Commons Thermal Storage System</td>
<td><strong>Insulation</strong> Install new insulation on the ice and chilled water piping; Original insulation failed and had to be removed because of mold growth.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Ice Making</strong> Troubleshoot and render functional</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Ice Melting</strong> Troubleshoot and render functional</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Ice Tanks Valve &amp; Piping</strong> Troubleshoot and resolve overflowing issue</td>
<td></td>
</tr>
<tr>
<td>A-5</td>
<td>Central Heating Plant</td>
<td><strong>HVAC</strong> Comprehensive recommissioning of the system; recalibrate all meters; add a remote monitoring system; check MCC for defective breakers; replace or repair the condensate polishers</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Lighting</strong> Upgrade to energy efficient fixtures and controls</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Plumbing</strong> Check for proper functionality</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Valve &amp; Piping</strong> Check for functionality and reinsulate where necessary</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Building</strong> Roof leaks</td>
<td></td>
</tr>
<tr>
<td>A-6</td>
<td>Exterior Lighting</td>
<td><strong>Lighting</strong> Upgrade parking lot lights to energy efficient fixtures and controls</td>
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<tr>
<td></td>
<td></td>
<td><strong>Lighting</strong> Upgrade sidewalk lights to energy efficient fixtures and controls</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Lighting</strong> Upgrade practice field lights to energy efficient fixtures and controls</td>
<td></td>
</tr>
</tbody>
</table>
- The following infrastructure improvement may be excluded from an Energy Performance Contract project but are included in the scope of the Initial Task.

### Non-EPC - Scope of Work

<table>
<thead>
<tr>
<th>Item #</th>
<th>Buildings</th>
<th>Systems</th>
<th>Comments / Suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-1</td>
<td>Energy Submetering</td>
<td>Utility</td>
<td>The consumptions of Banneker Hall, CBEIS, BSSC, North Chilled Water Plant, and SSB are already being metered by the existing Schneider Electric / PowerLogic metering system.</td>
</tr>
</tbody>
</table>

### Subsequent Tasks / Campus Information

MSU is currently beginning a process to update its Master Energy and Facility Infrastructure Plan ("Master Plan"). The Master Plan would include the following additional tasks:

- Utility systems (electric, steam, gas, heating, cooling, water & sewage) operation, maintenance, and infrastructure upgrade.
- IT infrastructure upgrade
- Deferred maintenance backlog reduction or elimination
- Energy Management System upgrade & optimization
- Campus wide energy conservation measures / ECM
- Sustainability, carbon neutrality and campus resiliency
- Capital investments
- Renewable energy utilization & on-site generations
- Traditional energy efficiency building upgrades
- Energy supply for current and future requirements

### Energy Supply

Most of the University’s electricity & gas is supplied by short-term contracts procured and managed by the State of Maryland. The current energy supply contracts were awarded in May of 2014, and since the average life of a State contract is about five years, the Department of General Services (DGS) is either working on or close to the awarding of new contracts. This contract is also used by other State agencies for their supply of energy.

Morgan State University uses approximately 54 million kWh of electricity and 1.6 million therms of natural gas annually. The contracted electricity, mentioned above, is delivered to two high-voltage substations on campus, and then distributed internally to campus buildings by medium-voltage systems. The remaining electricity (medium-voltage) is supplied directly to buildings with individual meters. All of the University’s natural gas, on the other hand, is delivered and metered at every building where it is being used.

It is the intent of the University to have all of its energy supplied under long-term contracts with a single vendor.

### Chilled Water System
Chilled water to campus buildings is either supplied locally or from three operating centralized chilled water generating facilities - the North Campus Chiller Water Plant, the Spencer Hall Chiller Plant, and the Morgan Commons Chiller Plant. All the facilities are owned by Morgan State University.

The North Chiller Plant has two 500 ton chillers and it supplies chilled water to the Center for the Built Environment and Infrastructure Studies (CBEIS), the Mitchell Engineering Building, and the Schaeffer Engineering Building. A 500 ton redundancy chiller is needed for this Plant to be a reliable source of chilled water.

The Spence Hall Chiller Plant has one 80 ton, one 300 ton, one 500 ton, and two 700 ton chillers. With the exception of the 500 ton chiller, all the chillers were installed during the winter months of 2019-2020. This plant serves the Science Complex (Spencer Hall, Calloway Hall, Key Hall, and Carnegie Hall) and most of the Academic Quad Buildings (Banneker Hall, McKeldin Center, Harper Tubman House, Truth Hall, Jenkins Behavioral Science, Holmes Hall, and the Carter Grant Wilson Building) which are connected to the chilled water loop by decouplers. The decouplers allow excess primary water to flow back to the return side of the chillers ensuring constant flow. The McMenemy Building is the only building of the Academic Quad that is served by local chillers, and they are nearing the end of their useful lives. Hence, this building will need to be connected to the chilled water loop of the Spencer Plant in the near future.

The Morgan Commons Chiller Plant has one 500 ton chiller, two 700 ton chillers, and a thermal storage system that is not operational. The University would like to render the thermal storage system fully functional and boost the cooling capacity of the plant, hence it is included in the scope of work of this EPC. This plant serves the Student Center, Richardson Library, and Hurt Gymnasium via direct burial piping and the utility tunnel. The Hill Field House, located on the Morgan Commons, is served by local chillers which are at the end of their useful lives. It is desirable, therefore, to connect this building to the Morgan Commons' chilled water loop which ends at the Northern wall of the Hill Field House.

**Steam and Condensate System**

Heating of campus buildings is done either by local boilers or by four centralized dual fuel (natural gas and #2 oil), high pressure steam boilers. Steam is distributed throughout the campus via the utility tunnel and direct burial piping. The building-side connections and equipment, to produce heating water or domestic water for the buildings, consist mainly of pressure regulating valve stations, local heat exchangers, and hot water pumps. Condensate is returned in a parallel path to the steam distribution. Generally, the building connected to the steam system has a condensate return pump to provide the necessary pressure to return the condensate back to the centralized plant.

Over the past few years, the fuel consumption of this plant has been increasing steadily. Multiple defective steam traps have been identified as the reason, so their replacements are presently ongoing; however, there may be other deficiencies in the system that need to be corrected to improve the plant's operating efficiency.

The Engineering Buildings are served by two hot water boilers and two steam boilers locally. These boilers are at the end of their useful lives, they are extremely inefficient, and controlling of the flue gases has been very problematic. It is desirable, therefore, to connect both of these buildings to the centralized steam loop which already exists in one of the buildings.

**Energy Management System**
The University’s direct digital control (DDC) consists of proprietary Honeywell Inc. and Johnson Controls Inc (JCI) Building Automation Systems (BAS).

Honeywell systems control the HVAC equipment of about 40% of the buildings on campus by an older DDC technology that is no longer supported or maintained by the manufacturer. The DDC controls were manufactured by Honeywell and have been in operation at the buildings for more than 20 years. These systems are now obsolete and control parts for maintenance and repair are no longer readily available from the manufacturer. Continual failures are causing comfort issues and increased energy consumption. Upgrading of the existing Honeywell DDC controls, therefore, is critically necessary to maintain comfort as well as improving the University’s energy efficiency.

Johnson Controls’ Metasys DDC System is controlling the HVAC equipment of the remaining (60%) buildings. The controls of some of the recent buildings are performing admirably; however, there are other buildings with issues that are as old as their respective building. Resolving the existing issues and retro-commissioning all of the buildings are high priorities of the Master Plan.

**Campus-Wide Energy Conservation Measures (ECM)**

As part of the Master Plan, MSU will consider a campus wide program that appropriately incentivizes a vendor to achieve targeted energy benchmarks, while also providing an attractive return to the vendor. Through such agreements, MSU will seek to keep rates low, become more environmentally friendly, and reduce its carbon footprint.

To the extent a Campus-Wide Energy Performance Contracting ECM is initiated, two primary stages would be required:

Stage I will involve the vendor providing an investment-grade energy audit of the facilities covered in the scope of work. The Energy Audit Report would contain an analysis and recommendation pertaining to implementation, operating cost savings, and avoided capital costs.

Performance contracting must result in a guaranteed minimum energy savings linked to actual documented energy and cost reductions. The savings achieved must be sufficient to cover all implementation costs including financing, maintenance, and monitoring fees on an annual basis for the duration of the contract. Also, the established energy baseline must be agreed upon by the vendor and MSU.

Stage II will cover the agreed-upon design and implementation of the ECM and associated measurement and verification. The contract may require the vendor to guarantee that the savings in any year will equal or exceed installation payments during the year.

**Renewables & On-site Generations**

Under the Master Plan, the University will assess and consider the following: The implementation of geothermal systems, the generation of electricity from photovoltaic cells, and the installation of a CHP system.

**Deferred Maintenance**
The estimated cost of the University's deferred maintenance backlog is over $50 million. The list includes Air Handling Units, Fan Coil Units, Unit Heaters, Variable Frequency Drives, DDC controllers & devices, Variable Air Volume boxes, Chillers, Boilers, Pumps, Pneumatic Controls, ATC & Atomizing Air Compressors, Hot water heaters, Transformers, MCC Panels, Plumbing Fixtures, Condensate Polishes, Steam Stations, Steam Traps, Elevators, Substations, Switchgear, Transformers, Utility Meters, etc. The buildings impacted the most by these adversities are Schaefer Engineering, Mitchell Engineering, Richardson Library, Murphy Fine Arts Center, Hill Field House, McMenemy Hall, Holmes Hall, and the Student Center.

Under the Master Plan the University will assess the condition of all the systems and their components (some of which are indicated above) and establish a plan that caters for growth, reliability, and sustainability.

**Capital investments**

Morgan State University will be seeking a willing partner during the implementation phase of its Master Plan to make capital investments to the Utility Systems to maintain and expand them as the University evolves.

**Timeline**

It is the goal of MSU to complete the IGA process for the Initial Task in the fall of 2020 and begin construction in 2021.

**Coordination with Master Campus Planning**

It is anticipated that the Vendor selected under the Master Service Agreement (Attachment J) would play an integral role in campus improvements under the Master Plan, but, based on capabilities, it is to be determined if the Vendor would have the lead role in developing and implementing the Master Plan.

2.1 **Investment Grade Audit / Preliminary Design and Development Phase.** For each Task, the Vendor will provide MCEC with a Phase I proposal for the Task within 30 days after the Vendor receives initial notification of the Task. MCEC will then decide whether to authorize the Vendor to perform a Phase I for the identified Task. The Phase I will include the development of a proposed comprehensive energy efficiency and guaranteed savings program for the Task. The objective shall be to identify technical solutions in order to maximize energy and cost savings and provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. The Vendor will guarantee the aggregated costs and savings of all approved work. The project as a whole must meet minimum energy reduction requirements, meet minimum expectations of equipment replacement, acceptable costs, and be fully funded with guaranteed energy savings to proceed to a Phase II Contract (as provided in the IDC, and also referred to an EPC contract in this RFQ).

The total cost of a Phase I may not exceed $250,000. Upon selection the Vendor for this contract award will be asked to provide a revised not to exceed total cost for the Phase I that is based on the defined project scope and may be less than but not greater than $250,000. Phase I costs, including IGA costs and other preliminary design and development costs, will be treated as provided in the IDC.
2.2 Phase II and Phase III. If following completion of the Phase I for a Task, MCEC determines to move forward with the Task, MCEC and the Vendor will enter into a Phase II contract for the Task, which will include provisions for Phase III. Phase II contracts have no dollar limit.

2.3 CONTRACT PAYMENTS. PAYMENTS UNDER ANY CONTRACT OR FOR ANY TASK WILL BE MADE BY MCEC TO VENDOR ONLY FROM CORRESPONDING FUNDS RECEIVED BY MCEC FROM MSU OR WHICH ARE OTHERWISE AVAILABLE FOR THAT PURPOSE. MCEC WILL NOT, AND IS UNDER NO OBLIGATION TO, PAY VENDOR FOR ANY WORK IF MCEC DOES NOT HAVE FUNDS, EITHER FROM MSU OR OTHERWISE AVAILABLE FOR THE PROJECT, AND DESIGNATED TO PAY FOR WORK OF VENDOR UNDER THE CORRESPONDING CONTRACT. THE OBLIGATION TO PAY AMOUNTS UNDER ANY CONTRACT IS NOT A DIRECT OR INDIRECT OBLIGATION OF MCEC OR THE STATE. PAYMENTS BEING HELD BELOW ARE NOT AVAILABLE FOR PAYMENT.

IN ADDITION TO ANY OTHER AVAILABLE REMEDIES, MCEC AND MSU RESERVE THE RIGHT TO REDUCE OR WITHHOLD PAYMENTS UNDER ANY OR ALL CONTRACTS (INCLUDING CONTRACTS FOR MULTIPLE PROJECTS) IN THE EVENT VENDOR DOES NOT PROVIDE MCEC AND MSU WITH ALL REQUIRED DELIVERABLES WITHIN THE TIMEFRAME SPECIFIED IN ANY CONTRACT OR VENDOR OTHERWISE BREACHES THE TERMS AND CONDITIONS OF ANY CONTRACT.

PART III: PROCUREMENT INSTRUCTIONS

3.1 Permitted Bidders. Only energy service companies who are eligible under the IDC may respond to this RFQ. Each responding energy service company agrees that all of the terms of the IDC, unless specifically excluded or altered in this RFQ, the Master Services Agreement, a Task Order, or any contract related to the Master Services Agreement, apply to this RFQ, the Master Services Agreement, and each project and contract undertaken under the terms of the Master Services Agreement.

3.2 Questions. Questions concerning this RFQ should be submitted to the Procurement Officer via email in a timely manner prior to the Question submittal due date of Wednesday, August 19, 2020 @ 4:00 p.m. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Qualifications Submittal Due Date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all potential Bidders that are known to have received a copy of the RFQ in sufficient time for the answer to be taken into consideration in the Qualifications Submittal.

3.3 Qualifications Submittals Due Date and Time. Qualifications Submittals, in the number and form set forth in RFQ Section 4 must be received by the Procurement Officer no later than the Qualifications Submittal Due Date and time indicated on the RFQ.

Requests for extension of this time or date will not be granted. Bidders emailing Qualifications Submittals should request acknowledgment of receipt by the Procurement Officer to ensure timely receipt by the Procurement Officer. Qualifications Submittals received after the due date and time listed in the RFQ will not be considered.

Qualifications Submittals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFQ for receipt of Qualifications Submittals.
Qualifications Submittals will not be opened publicly.

3.4 Multiple or Alternate Qualifications Submittals. Multiple and/or alternate Qualifications Submittals will not be accepted.

3.4 Economy of Preparation. Qualifications Submittals should be prepared simply and economically and provide a straightforward and concise description of the Vendor’s Qualifications Submittal to meet the requirements of this RFQ.

3.5 Public Information Act Notice. Each Bidder should give specific attention to the clear identification of those portions of its Qualifications Submittal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by MCEC under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFQ Section 4.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Qualifications Submittal and if applicable, separately in the Financial Qualifications Submittal.

Bidders are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

3.6 Evaluation Committee. The Evaluation Committee will make recommendations to the Procurement Officer for the contract to the responsible bidder whose Qualifications Submittals are determined to be the most advantageous to MCEC and MSU. The Evaluation Committee will consist of the Procurement Officer, Contract Monitor and Robert Riesner, Morgan State University, Director of Physical Plant.

3.7 Award Basis. The Contract shall be awarded to the responsible Bidder submitting the Qualifications Submittal that has been determined to be the most advantageous to MCEC for providing the goods and services as specified in this RFQ.

MCEC’s selection of the Vendor under this RFQ does not bind MCEC or the Vendor to enter into any Phase I or Phase II contracts.

3.8 Oral Presentation. Bidders may be required to make oral presentations to MCEC and MSU representatives. Bidders must confirm in writing any substantive oral clarification of or change in their Qualifications Submittals made in the course of discussions. Any such written clarifications or changes then become part of the Bidder’s Qualifications Submittal and are binding if the Contract is awarded. The Procurement Officer will notify Vendors of the time and place of oral presentations.

3.9 Duration of Qualifications Submittal. Qualifications Submittals submitted in response to this RFQ are irrevocable for 120 days following the closing date for submission of Qualifications Submittals. This period may be extended at the Procurement Officer’s request only with the Vendor’s written agreement.

3.10 Revisions to the RFQ. If it becomes necessary to revise this RFQ before the due date for Qualifications Submittals, the Department shall endeavor to provide addenda to all prospective Bidders that were sent this RFQ or are otherwise known by the Procurement Officer to have obtained this RFQ. In addition, addenda to the RFQ will be circulated via email to all Bidders.
It remains the responsibility of all prospective Vendors to confirm email receipt for any addenda issued prior to the submission of Qualifications Submittals. Addenda made after the due date for Qualifications Submittals will be sent only to those Bidders that submitted timely Qualifications Submittals and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFQ issued before the Qualifications Submittal due date shall be included in the Bidder’s Qualifications Submittal. Acknowledgement of the receipt of addenda to the RFQ issued after the Qualifications Submittal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum.

3.11 Cancellations. MCEC reserves the right to cancel this RFQ, accept or reject any and all Qualifications Submittals, in whole or in part, received in response to this RFQ, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Bidders in any manner necessary to serve the best interests of MCEC. MCEC also reserves the right, in its sole discretion, to award a Contract based upon the written Qualifications Submittals received without discussions or negotiations.

3.12 Incurred Expenses. MCEC and MSU will not be responsible for any costs incurred by any Bidder in preparing and submitting a Qualifications Submittal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Qualifications Submittal in response to this solicitation.

3.13 Protest/Disputes. Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

3.14 Vendor Responsibilities. The selected Vendor shall be responsible for all products and services required by this RFQ. All subcontractors must be identified and a complete description of their role relative to the Qualifications Submittal must be included in the Vendor’s Qualifications Submittal. If applicable, subcontractor utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFQ (see Section 3.24 “Minority Business Enterprise Goals” and Section 3.25 “Veteran-Owned Small Business Enterprise Goal”).

If a Bidder that seeks to perform or provide the services required by this RFQ is the subsidiary of another entity, all information submitted by the Bidder, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Vendor, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder shall submit with its Qualifications Submittal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Vendor under this Section will not automatically result in crediting the Vendor with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Vendor’s experience and qualifications. Instead, the Vendor will be evaluated on the extent to which MCEC determines that the experience and qualification of the parent are transferred to and shared with the Vendor, the parent is directly involved in the
performance of the Contract, and the value of the parent’s participation as determined by MCEC.

3.15 **Mandatory Contractual Terms.** By submitting a Qualifications Submittal in response to this RFQ, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this RFQ and the Contract, attached herein as Attachment J. Any exceptions to this RFQ or the Contract shall be clearly identified and submitted in the Qualifications Submittal. A Qualifications Submittal that takes exception to these terms may be rejected (see RFQ Section 4.4.2.4).

3.16 **Qualifications Submittal Affidavit.** A Qualifications Submittal submitted by a Vendor must be accompanied by a completed Qualifications Submittal Affidavit. A copy of this Affidavit is included as Attachment A of this RFQ.

3.17 **Contract Affidavit.** All Bidders to this RFQ are advised that if a Contract is awarded as a result of this solicitation, the successful Vendor will be required to complete a Contract Affidavit, a copy which is included as Attachment K of this RFQ. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Vendor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

3.18 **Compliance with Laws/Arrearages.** By submitting a Qualifications Submittal in response to this RFQ, the Vendor, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Vendor represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

3.19 **Verification of Registration and Tax Payment.** Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit https://www.egov.maryland.gov/businessexpress.

It is strongly recommended that any all Bidders under this RFQ complete registration prior to the due date for receipt of Qualifications Submittals. A Bidder’s failure to complete registration with SDAT may disqualify that Bidder from final consideration and recommendation for Contract award.

3.20 **False Statements.** Vendors are advised that Md. Code Ann., State Finance and Procurement Article, Section 11-205.1 provides as follows:

(a) In connection with a procurement contract a person may not willfully: (1) falsify, conceal, or suppress a material fact by any scheme or device; (2) make a false or fraudulent statement or representation of a material fact; or (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
(b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

(c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 5 years or both.

3.21 Payments by Electronic Funds Transfer. By submitting a response to this solicitation, the Vendor agrees to accept payments by electronic funds transfer (EFT).

3.22 Prompt Payment Policy. This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Vendor shall comply with the prompt payment requirements outlined in the Contract “Prompt Payment” clause (see Attachment M). Additional information is available on GOMA’s website at: http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf.

3.23 Electronic Procurements Authorized.

(a) To the extent permitted by law, MCEC shall conduct this procurement by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

(b) Participation in this solicitation process shall constitute consent by the Bidders and the selected Vendor to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.

(c) “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., https://emaryland.buyspeed.com/bso/), and electronic data interchange.

(d) In addition to specific electronic transactions specifically authorized in other sections of this solicitation the following transactions are authorized to be conducted by electronic means on the terms described:

(i) The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue: (A) The solicitation (e.g., the RFQ); (B) Any amendments; (C) Questions and responses; (D) Communications regarding the solicitation or Qualifications Submittal to any Bidder; (E) Notices of award selection or non-selection; and (F) The Procurement Officer’s decision on any Qualifications Submittal protest or Contract Documents claim.

(ii) A Vendor may use e-mail to: (A) Ask questions regarding the solicitation; (B) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or
facsimile, but only on the terms specifically approved and directed by the Procurement Officer.

(iii) The Procurement Officer, the Contract Monitor, and the Vendor may conduct day-to-day Contract administration utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

(e) Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract Documents, or direction from the Procurement Officer or Contract Monitor.

3.24 Minority Business Enterprise Goals.

(a) Establishment of Goal and Subgoals. An overall minimum MBE subcontractor participation goal of 30% of the total contract dollar value, including all option years, if any, has been established for this RFQ.

In addition, the following subgoals categories could be established for this procurement (Subgoals and subgroups will be identified on a project-by-project basis):

(i) (African-American subgoal percentage) % for African-American MBEs;

(ii) (Asian-American subgoal percentage)% for Asian-American MBEs;

(iii) (Hispanic-American subgoal percentage)% for Hispanic-American MBEs; and

(iv) (Woman-Owned subgoal percentage)% for Woman-Owned MBEs.

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

(b) The following Minority Business Enterprise participation instructions, and forms are provided to assist Vendors:

Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Qualifications Submittal)
Attachment D-1B Waiver Guidance
Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
Attachment D-2 Outreach Efforts Compliance Statement.
Attachment D-3A MBE Subcontractor Project Participation Certification
Attachment D-3B MBE Prime Project Participation Certification
Attachment D-4A Prime Vendor Paid/Unpaid MBE Invoice Report
Attachment D-4B MBE Prime Vendor Report
Attachment D-5 Subcontractor/Vendor Unpaid MBE Invoice Report

(c) A Bidder shall include with its Qualifications Submittal a completed MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) whereby:

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

(ii) The Vendor responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Qualifications Submittal submission. The Vendor shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

(iii) A Vendor requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

If a Vendor fails to submit a completed Attachment D-1A with the Qualifications Submittal as required, the Procurement Officer shall determine that the Qualifications Submittal is not reasonably susceptible of being selected for award.

(d) Vendors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

(e) Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Vendor must provide the following documentation to the Procurement Officer.

(i) Outreach Efforts Compliance Statement (Attachment D-2);

(ii) MBE Subcontractor/Prime Project Participation Certification (Attachment D-3A/3B); and

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

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

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

(g) The Vendor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide MCEC with ongoing monitoring of MBE participation:

(i) Attachment D-4A (Prime Vendor Paid/Unpaid MBE Invoice Report);

(ii) Attachment D-4B (MBE Prime Vendor Report, if applicable); and


(h) A Vendor that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

(i) All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Vendor in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Qualifications Submittal for order of precedence purposes (see Contract – Attachment J).

(j) The Vendor is advised that liquidated damages will apply in the event the Vendor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – Attachment J, "Liquidated Damages" clause).

(k) As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Vendor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (Attachment D-1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify certified MBE subcontractor (see Section 4B of the MBE Participation Schedule (Attachment D-1A) used to meet those goals. If dually-certified, the MBE Prime can be designated as only one of the MBE sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.
(l) With respect to Contract administration, the Vendor shall:

(i) Submit to MCEC’s designated representative by the 10th of the month following the reporting period: (A) A Prime Vendor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and (B) (If Applicable) An MBE Prime Vendor Report (Attachment D-4B) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.

(ii) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment D-5) that identifies the Contract and lists all payments to the MBE subcontractor received from the Vendor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

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

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

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

3.25 Veteran-Owned Small Business Enterprise Goal. There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

3.26 Living Wage Requirements.

(a) Maryland law requires that Vendors meeting certain conditions pay a living wage to covered employees on MCEC service contracts over $100,000. Maryland Code, State Finance and Procurement, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Vendor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

(b) If subject to the Living Wage law, Vendor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Vendor understands that failure of Vendor to provide such documents is a material breach of the terms and conditions and may result in Contract termination,
disqualification by the State from participating in State contracts, and other sanctions. See the "Living Wage" clause in the Contract (Attachment J).

(c) Additional information regarding the State's living wage requirement is contained in Attachment E. Vendors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment E-1) with their Qualifications Submittals. If a Vendor fails to complete and submit the required documentation, the State may determine the Vendor to be not responsible under State law.

(d) Vendors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

(e) The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Vendor provides 50% or more of the services. The Vendor must identify in its Qualifications Submittal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

(i) If the Vendor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.

(ii) If the Vendor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

(iii) If the Vendor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

(f) Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website: http://www.dllr.state.md.us/labor/prev/livingwage.shtml.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

3.27 Federal Funding Acknowledgement. This Contract does not contain federal funds.

3.28 Conflict of Interest Affidavit and Disclosure. A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. A Vendor is required to disclose to the Procurement Officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.
Vendors shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment F) and submit it with their Qualifications Submittals. All Vendors are advised that if a Contract is awarded as a result of this solicitation, the Vendor’s personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to Attachment F, Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

3.29 Non-Disclosure Agreement. All Vendors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as Attachment G. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Qualifications Submittal.

3.30 HIPAA - Business Associate Agreement. A HIPAA Business Associate Agreement is not required for this procurement.

3.31 Nonvisual Access. This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

3.32 Mercury and Products That Contain Mercury. All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Vendor must submit a Mercury Affidavit in the form of Attachment H with its Qualifications Submittal.

3.33 Location of the Performance of Services Disclosure. The Vendor is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as Attachment I. The Disclosure must be provided with the Qualifications Submittal.

3.34 Department of Human Resources (DHR) Hiring Agreement. All Bidders to this RFQ are advised that if a Contract is awarded as a result of this solicitation, the successful Vendor will be required to complete a DHR Hiring Agreement. A copy of this Affidavit is included as Attachment L. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

3.35 Small Business Reserve (SBR) Procurement. This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

PART IV: RFQ SUBMISSION REQUIREMENTS

4.1 General. Each Bidder shall submit the information requested in this Part IV in a well-organized concise manor via email to the Procurement Officer.

4.11 MSU 2020 Qualification Information

Bidder responses to the following Qualification Information should be concise, well organized and not exceed thirty (30) pages.

(1) Provide a list and brief descriptions of contracts, EPC or otherwise, awarded for projects at Higher Education Institutions that included Utility System (electric, steam, gas, heating, cooling, water & sewage) maintenance, operations, and capital
investments. Please identify approach and methodology. What is experience with Historically Black colleges and Universities (HBCU)?

(2) Provide a list and brief descriptions of contracts, EPC or otherwise, awarded for projects at Higher Education Institutions that included Photovoltaic (PV), Geothermal, and CHP installations.

(3) Provide a description of projects developed under a Master Service Agreement for entities and projects with similar scale to MSU and the project contemplated project. Please define approach to implementing and what were the specific outcomes?

(4) Provide a description of demonstrated ability for submetering projects performed at a similar scale to the project contemplated at MSU. Please define approach to implementing and successful outcome.

(5) Provide a list of MCEC contracts or government contracts awarded for submetering projects.

(6) Provide a list of EPC contracts awarded for projects at Higher Education Institutions.

(7) Provide a list of EPC contracts that exceeds $6 million, the contact information of each contract, the cost estimate prior to IGA, the actual cost of each contract, key personnel names of each contract, the role of each key personnel, and resume of each key personnel. Highlight any projects performed for the State of Maryland, or related agencies.

(8) Provide descriptions of EPC Example Contracts, minimum of 5, which best illustrate your team's qualifications and strengths.

(9) Provide a list and brief descriptions of contracts, EPC or otherwise, awarded to Higher Education Institutions for the supply of energy (i.e. natural gas, electricity, etc).

(10) Provide a list and brief descriptions of contracts, EPC or otherwise, awarded to Higher Education Institutions that involved utility systems, infrastructures assessment and upgrades.

(11) Describe your experience with O&M and capital improvements especially as these improvements pertain to deferred maintenance at higher education institutions.

(12) Describe your experience developing and implementing strategic energy plans for higher education institutions?

4.2 General Qualifications Submission Requirements

4.2.1 It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Vendor be included on the outside of the package. MCEC’s preference is for the Qualifications Submittal a single PDF file including a label bearing:
(1) RFQ title and number, (2) Name and address of the Vendor, and (3) Closing date and time for receipt of Qualifications Submittals to the Procurement Officer (see RFQ Key Information Summary Sheet) prior to the date and time for receipt of Qualifications Submittals (see RFQ Section 4.4 “Qualifications Submittals Due (Closing) Date and Time”).

4.2.4 Beginning with Tab B (see RFQ Section 4.4.2.3), all pages of Qualifications Submittal shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFQ Sections 4.4.2.1 and 4.4.2.2), should be numbered using romanettes (ex. i, ii, iii, iv, v, etc.).

4.2.5 Qualifications Submittals and any modifications to Qualifications Submittals will be shown only to MCEC employees, members of the Evaluation Committee, and other persons deemed by the MCEC to have a legitimate interest in them.

4.3 Delivery Vendors may email Qualifications Submittals.

4.4 Qualifications Submittal - This section defines the minimum material and documentation to be submitted in the Vendor's Technical Qualifications Submittal. Submissions should be carefully organized in the same order as the RFQ and clearly provide the information required. Clarity and conciseness are important. Technical Qualifications Submittals shall be determined as being either reasonably or not reasonably susceptible for award.

4.4.1 Format of Qualifications Submittal. The RFQ sections are numbered for ease of reference.

Section 4.4.2 sets forth the order of information to be provided in the Qualifications Submittal, e.g.,

Section 4.4.2.1 “Title and Table of Contents,”
Section 4.4.2.2 “Claim of Confidentiality,”
Section 4.4.2.3 “Transmittal Letter,”
Section 4.4.2.4 “Executive Summary,” etc.

In addition to the instructions below, responses in the Vendor's Qualifications Submittal should reference the organization and numbering of Sections in the RFQ (ex. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . . ,” etc.).

This Qualifications Submittal organization will allow MCEC officials and the Evaluation Committee to "map" Vendor responses directly to RFQ requirements by Section number and will aid in the evaluation process.

4.4.2 The Qualifications Submittal shall include the following documents and information in the order specified as follows. Each section of the Qualifications Submittal shall be separated by a TAB as detailed below:

4.4.2.1 Title Page and Table of Contents (Submit under TAB A). The Qualifications Submittal should begin with a Title Page bearing the name and address of the Vendor and the name and number of this RFQ. A Table of Contents shall follow the Title Page for the Qualifications Submittal, organized by section, subsection, and page number.
4.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1). Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Vendor's Financial Qualifications Submittal. An explanation for each claim of confidentiality shall be included (see Section 3.5 "Public Information Act Notice"). The entire Qualifications Submittal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Qualifications Submittal.

4.4.2.3 Transmittal Letter (Submit under TAB B). A Transmittal Letter shall accompany the Qualifications Submittal. The purpose of this letter is to transmit the Qualifications Submittal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Vendor to the services and requirements as stated in this RFQ. The Transmittal Letter should include the following:

a. Name and address of the Vendor; b. Name, title, e-mail address, and telephone number of primary contact for the Vendor; c. Solicitation Title and Solicitation Number that the Qualifications Submittal is in response to; d. Signature, typed name, and title of an individual authorized to commit the Vendor to its Qualifications Submittal; e. Federal Employer Identification Number (FEIN) of the Vendor, or if a single individual, that individual's Social Security Number (SSN); f. Vendor's eMM number; g. Vendor's MBE certification number (if applicable); h. Acceptance of all MCEC RFQ and Contract terms and conditions (see Section 3.15); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and i. Acknowledgement of all addenda to this RFQ.

4.4.2.4 Executive Summary (Submit under TAB C). The Vendor shall condense and highlight the contents of the Qualifications Submittal in a separate section titled "Executive Summary." The Summary shall identify the Service Category(ies) and Region(s) for which the Vendor is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Vendor is the subsidiary of another entity, and if so, whether all information submitted by the Vendor pertains exclusively to the Vendor. If not, the subsidiary Vendor shall include a guarantee of performance from its parent organization as part of its Executive Summary.

The Summary shall also identify any exceptions the Vendor has taken to the requirements of this RFQ, the Contract (Attachment J), or any other attachments. Exceptions to terms and conditions may result in having the Qualifications Submittal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If the Vendor has taken no exceptions to the requirements of this RFQ, the Contract (Attachment J), or any other attachments, the Executive Summary shall so state.

4.4.2.5 Team Qualification and Experience (Submit under TAB D).

Vendor must document team continuity whereby the majority of team members have served throughout the term of at least 2 entire projects.

1) Organizational chart:

The Vendor shall submit an organizational chart that clearly shows the responsibility and interrelationship of all key team members of the project team, including all sub-consultants and subcontractors firms to the Vendor. All sub-consultants and subcontractors shall be contracted directly to the Vendor.

2) Key personnel:
a. A qualified design team, either in-house or under contract to VENDOR, is required to provide a complete feasibility study and design service for all EPC projects. In this section, submit qualifications, business references and resumes for all individual team members of the engineering design firms.

b. Provide resumes for key project managers, energy engineers, design engineers (Mechanical, Electrical, Structural, etc.), Construction Managers, Operations Managers, and Maintenance personnel. Vendor must submit a written request to change any key team members. MCEC reserves the right to reject the requested replacement.

c. The Mechanical Engineer, Electrical Engineer and Structural Engineer must all be licensed engineers, in good standing, in the State at the time of Qualifications Submittal.

d. The Project Manager shall be a Certified Energy Manager (CEM). Certification must be active and in good standing at the time of Qualifications Submittal submission.

e. Designated Project Managers must have experience on a minimum of 2 Energy Performance Contracts (EPC) projects valued at over $2,000,000 each.

3) Describe how work assignments are made and how the team will be affected by additional EPC projects whether they be State, MCEC, or local government projects.

4) The Vendor shall present their ability to develop project tracking and reporting documents for submittals, requests for information and Qualifications Submittals/change orders. Therefore, Vendors shall include resumes that indicate qualifications of in-house staff or consultants proposed for scheduling responsibilities and tools/systems/software to be used for implementation of the scheduling effort.

5) All information presented shall clearly demonstrate the ability of the Vendor to successfully execute energy performance projects, including analysis, engineering, construction, maintenance, and measuring and verification of energy savings.

6) VENDOR must provide qualified maintenance personnel to deliver maintenance service throughout the length of the contract.

4.4.2.6 Vendor Prior Project Experience: (Submit under TAB E).

1) Sample Detailed Engineering Feasibility Study: (Submit under sub-heading E-4.4.2.6.1).

Include one detailed engineering feasibility study conducted by the Vendor’s project team on a similar energy conservation project, funded by energy savings. Clearly mark A Sample Detailed Technical Study” on the cover with your firm’s name. The study must include detailed energy and economic calculations, preliminary design and specifications, narrative clearly indicating scope of work. Study should be submitted for project where construction has been completed.

2) Green Building and Sustainable Design Experience: (Submit under sub-heading E-4.4.2.6.2).

Describe Vendor’s experience with the analysis, design, construction, and operation of geothermal heat pump system, solar energy, fuel cells, or other renewable energy resources. Describe in detail previous projects where these technologies were evaluated even if they were
not implemented. If studied and not implemented explain why. Greater consideration shall be given to Vendors with experience in contracting creative and cutting edge technology for evaluation and inclusion in projects.

3) Past Performance and Reference: (Submit under sub-heading E-4.4.2.6.3).

MCEC will consider the Vendor’s past performance on energy performance projects with Maryland State Agencies, or other municipalities. Ability to properly assess facilities loads, adherence to schedule, engineering, operability of installed systems, timely delivery of services and achievement of energy guarantee, creativity of Phase I study and project development, use of new or renewable technologies, compliance with IDC, ability to properly price a project, and timely response to any shortfall in guaranteed savings will all be considered. a. The Vendor shall list five (5) recent projects with capital costs of a minimum of $6,000,000 performed by the same team where the construction phase is completed. Projects must have an energy guarantee with a description of the guarantee type for each.

b. As proof of meeting the requirements described in Section 1, the Vendor shall provide with its Qualifications Submittal five (5) references from the past five years that cumulatively are able to attest to the Vendor’s experience. The following must be included for each provided reference:

   i. A general description of each project being Vendored as complete or partial proof that the requirements of Section 1 have been satisfied, including the customer (reference) for whom each project was performed and when and where each was performed.

   ii. The name and title of a contact person for the reference who can attest to the type of project the Vendor performed for the reference and the satisfaction of the Vendor’s performance in satisfying the requirements of the project, from the perspectives of quality, quantity, timeliness and cost.

   iii. A telephone number and email address at which the individual identified as the contact can be reached.

c. Vendors are encouraged to submit sufficient graphic, narrative, and documentary material required to clearly demonstrate qualifications, financial responsibility, and performance capability of the Vendor’s team.

4.4.2.7 Technical and Managerial Approach: (Submit under TAB F)

1) Prior Project Experience: (Submit under sub-heading F-4.4.2.7.1).

Describe the Vendor’s energy performance contracting (EPC) experience in both the public and private sector with emphasis on State and local governmental projects with a maximum 15 year payback. Indicating experience in the development, construction and implementation of comprehensive energy efficiency and guaranteed savings programs and proposed versus actual completion duration. Explain variances.

2) Construction Schedule: (Submit under sub-heading F-4.4.2.7.2).

The Vendor must clearly demonstrate knowledge and means of proper scheduling and planning practices in accordance with the scheduling requirements of the General Conditions, Vendor’s submission of a Critical Path Method (CPM) construction schedule that clearly indicates from the estimated start of construction the duration of the major elements of the project and how
they interface sequentially. Describe Vendors proactive management of the project’s schedule and ability to recover from delays. Provide actual CPM schedule that was developed for one of the five (5) reference projects.

3) Project Management: (Submit under sub-heading F-4.4.2.7.3).

Describe Vendor’s approach to managing the entire project and qualifications of project managers during the development and construction phases, including interface with sub-consultants and subcontractors, development of a comprehensive plan, detailed design, procurement, construction, training, punch lists and start-up. Identify site members of the project team who will be responsible for the various stages of design and implementation. Describe the various responsibilities and coordination of the team members, as well as the Using Agency, facility, DGS personnel and MEA, to ensure an effective and timely completion of both Phase I and Phase II of a project.

4) Development of Project Scope: (Submit under sub-heading F-4.4.2.7.4).

To demonstrate expertise in identifying energy conservation measures, provide the methodology involved in the preparation of a typical detailed engineering feasibility study, and development of preliminary plans and specifications in order for MCEC to proceed with the approval and implementation of the facility energy efficiency program. This shall include but not be limited to site investigation, analysis of the existing HVAC, and or steam or chilled water systems in their entirety including but not limited to existing distribution systems, operations and utility costs which may be supported with measured data, fuel switching, load calculations, current system operation practices, and maintenance. MCEC and MSU are paying for expert advice and analysis and fully expects to receive this expertise in the form of a Phase I Proposal, a comprehensive energy audit, and all Phase I, Phase II, and Phase III work. Oversights or omissions of existing conditions, systems or equipment, and/or operating routines, will not be acceptable.

5) Owner Training: (Submit under sub-heading F-4.4.2.7.5). Provide detailed information on the training and education programs available for facility operating and maintenance personnel, including course content, location, schedule, hours, and types of trainees that are included.

4.4.2.8 Financial Approach: (Submit under TAB G).

1) Procurement: (Submit under sub-heading G-4.4.2.8.1).

The Vendor shall describe the proposed method of procurement of all major types of equipment and services, including those subcontracted, and the pricing policy that will be applied to provide a competitive cost environment throughout a project.

3) Energy Savings Guarantee: (Submit under sub-heading G-4.4.2.8.3).

The Vendor shall provide terms, conditions, exclusions, insurers name and source of cost savings performance guarantee including provisions for payment due to MCEC in the event guaranteed savings exceed actual savings. Vendor shall provide sample policy proposed for use in this project, and if self-insured, provide a complete description of how insurance is funded. Vendor shall obtain insurance or bond that will remain in effect for the term of the Contract to guarantee savings in the event the Vendor is unable or unwilling to pay any difference between actual cost savings and guaranteed savings. Policy/bond must be written
such that MCEC is listed as an additionally insured entity which will provide MCEC with the ability to make a claim against the bond/policy.

4) Measurement & Verification: (Submit under sub-heading G-4.4.2.8.4).

The Vendor shall indicate its approach to monitoring the actual energy savings associated with the project. Provide sample energy savings calculation documents which will become an attachment to the guaranteed energy savings contract. Describe the methodology, measurement, and monitoring format of actual energy savings. Also, describe the process used to adjust the energy consumption baseline throughout the contract period.

4.4.2.9 Financial and Legal Capability (Submit under TAB H)

1) Financial Statement: (Submit under sub-heading H-4.4.2.9.1)

A Vendor must include in its Qualifications Submittal a commonly-accepted method to prove its fiscal integrity. The Vendor shall include Audited Financial Statements, preferably a Profit and Loss (P&L) Statement and a Balance Sheet, for the last two (2) years.

In addition, the Vendor may supplement its response to this Section by including one or more of the following with its response:

a. Dun & Bradstreet Rating; b. Standard and Poor's Rating; c. Lines of credit; d. Evidence of a successful financial track record; and e. Evidence of adequate working capital.

2) Legal Action Summary: (Submit under sub-heading H-4.4.2.9.2)

The Vendor's summary shall include a list of all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which related to procurement or performance of any public or private contracts. The summary shall include:

a. A Statement as to whether there are any outstanding legal actions or potential claims against the Vendor and a brief description of any action; b. A brief description of any settled or closed legal actions or claims against the Vendor over the past five (5) years; c. A description of any judgments against the Vendor within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and d. In instances where litigation is on-going, and the Vendor has been directed not to disclose information by the court, the name of the judge and location of the court.

3) Performance Bond or Insurance: (Submit under sub-heading H-4.4.2.9.3)

The Vendor shall list the name of the agent or bonding/insurance company that will be providing the bond /policy for the guarantee. List current bonding / insurance capacity and maximum length of term for bond /policy.

4.4.2.10 Certificate of Insurance (Submit under TAB I). The Vendor shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Qualifications Submittal submission date.

4.4.2.11 Additional Required Technical Submissions (Submit under TAB J).
The following documents shall be completed, signed, and included in the Technical Qualifications Submittal, under TAB J that follows the material submitted in response to Section 4.4.2.

a. Completed Qualifications Submittal Affidavit (Attachment C).

b. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment F-1).

4.4.2.12 *If required, the following documents shall be completed, signed, and included in the Technical Qualifications Submittal, under TAB O that follows the material submitted in response to Section 4.4.2. *See appropriate RFQ Section to determine whether the particular document is required for this procurement:


b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D1A). See Section 3.24;

c. Completed Federal Funds Attachment. See Section 3.27;

d. Completed Conflict of Interest Affidavit and Disclosure (Attachment F). See Section 3.28;

e. Completed Mercury Affidavit (Attachment H). See Section 3.32;


g. Completed Location of the Performance of Services Disclosure (Attachment I). See Section 3.33.

PART V: EVALUATION AND SELECTION PROCESS

5.1 Evaluation Committee. Evaluation of Qualifications Submittals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose. The Evaluation Committee will review Qualifications Submittals, participate in Bidder oral presentations and discussions, and provide input to the Procurement Officer. MCEC reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

5.2 Reciprocal Preference. Although Maryland law does not generally authorize procuring units to favor resident vendors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland vendors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

(a) The Maryland resident business is a responsible vendor;

(b) The most advantageous vendor is from a responsible vendor whose principal office or principal operations through which it would provide the services required under this RFQ is in another state;
(c) The other state gives a preference to its resident businesses through law, policy, or practice; and

(d) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.3 Selection Procedures.

(a) General. The Contract will be awarded in accordance with the Competitive Sealed Qualifications Submittals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Qualifications Submittals method allows for the conducting of discussions and the revision of Qualifications Submittals during these discussions. Therefore, MCEC may conduct discussions with all Bidders that have submitted Qualifications Submittals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, MCEC reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), MCEC may determine a Bidder to be not responsible and/or a Bidder's Qualifications Submittal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Qualifications Submittals and prior to Contract award. If the MCEC finds a Bidder to be not responsible and/or a Bidder's Qualifications Submittal to be not reasonably susceptible of being selected for award, that Bidder's Qualifications Submittal will be returned.

(b) Selection Process Sequence

(i) A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) is included and properly completed, if there is an MBE goal. In addition, a determination is made that all Minimum Qualifications, if any (See RFQ Section 1), have been satisfied.

(ii) Qualifications Submittals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of MCEC's requirements and Bidder's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to MCEC. Bidders will be contacted by MCEC as soon as any discussions are scheduled.

(iii) Bidders must confirm in writing any substantive oral clarifications of, or changes in, their Qualifications Submittals made in the course of discussions. Any such written clarifications or changes then become part of the Bidder's Qualifications Submittal. Qualifications Submittals are given a final review and ranked.

(iv) When in the best interest of MCEC, the Procurement Officer may permit Qualified Bidders to revise their initial Qualifications Submittals and submit, in writing, Best and Final Offers (BAFOs). MCEC may make an award without issuing a request for a BAFO.

(c) Award Determination Upon completion of the Qualifications Submittal evaluations and rankings, each Bidder will receive an overall ranking. The Evaluation Committee will select
Bidders based on the highest ranked scores. The Evaluation Committee will make recommendations to the Procurement Officer for the contract to the responsible Bidder whose Qualifications Submittals are determined to be the most advantageous to MCEC. The Procurement Officer will recommend award of the Contract to the responsible Bidder that submitted the Qualifications Submittal determined to be the most advantageous to MCEC.

5.4 Documents Required upon Notice of Recommendation for Contract Award. Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

(a) Contract (Attachment J),
(b) Contract Affidavit (Attachment K),
(c) MBE Attachments D-2 and D-3A/B, within ten (10) Business Days, if applicable; *see Section 3.24,
(d) MBE Waiver Justification within ten (10) Business Days (see MBE Waiver Guidance and forms in Attachments D-1B and D-1C), if a waiver has been requested (if applicable; *see Section 3.24),
(e) Non-Disclosure Agreement (Attachment I), if applicable; *see Section 3.29,
(f) DHR Hiring Agreement (Attachment L), if applicable *see Section 3.34, and
(g) Copy of a current Certificate of Insurance with the prescribed limits set forth in the IDC, listing MCEC and MSU as additional insureds, as applicable; *see Section 3.1 of the IDC
RFQ ATTACHMENTS

ATTACHMENT A – Qualifications Submittal Affidavit. This Attachment must be completed and submitted with the Qualifications Submittal.

ATTACHMENTS B and C were intentionally deleted.

ATTACHMENTS D – Minority Business Enterprise Forms. If required (see RFQ Section 3.24), these Attachments include the MBE subcontracting goal Statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Vendor's Qualifications Submittal or the Qualifications Submittal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Vendor must submit Attachments D-2 and D-3A/B.

ATTACHMENT E – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement. Attachment E-1 Living Wage Affidavit of Agreement must be completed and submitted with the Qualifications Submittal.

ATTACHMENT F – Conflict of Interest Affidavit and Disclosure. If required (see RFQ Section 3.28), this Attachment must be completed and submitted with the Qualifications Submittal.

ATTACHMENT G – Non-Disclosure Agreement. If required (see RFQ Section 3.29), this Attachment must be completed and submitted within five (5) Business Days after receiving notification of recommendation for award. However, it is suggested that this document be completed and submitted with the Qualifications Submittal.

ATTACHMENT H – Mercury Affidavit. This Attachment must be completed and submitted with the Qualifications Submittal.

ATTACHMENT I – Location of the Performance of Services Disclosure. If required (see RFQ Section 3.33), this Attachment must be completed and submitted with the Qualifications Submittal.

ATTACHMENT J – Contract (Master Services Agreement). This is the form of the contract of the Master Services Agreement. It is provided with the RFQ for informational purposes and is not required to be submitted at Qualifications Submittal submission time. Upon notification of recommendation for award, a completed Contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Vendor.

ATTACHMENT K – Contract Affidavit. This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT L – Department of Human Resources (DHR) Hiring Agreement. This Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.
ATTACHMENT M – Performance Evaluation Form (Vendor’s Performance Evaluation)

ATTACHMENT N – Abbreviations and Definitions
Attachment A – Qualifications Submittal Affidavit

Request for Qualifications-- RFQ-MSU2020

A. AUTHORITY  I hereby affirm that I, ____________, (name of affiant) am the ____________(title) and duly authorized representative of ____________ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION  The undersigned Vendor hereby certifies and agrees that the following information is correct: In preparing its Qualifications Submittal on this project, the Vendor has considered all Qualifications Submittals submitted from qualified, potential subVendors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subVendor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for MCEC to reject the Qualifications Submittal submitted by the Vendor on this project, and terminate any contract awarded based on the Qualifications Submittal. As part of its Qualifications Submittal, the Vendor herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Vendor discriminated against subVendors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Vendor agrees to comply in all respects 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.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES  The undersigned Vendor hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a Vendor may not identify a certified minority business enterprise in a Qualifications Submittal and:

(1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Qualifications Submittal;
(2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Qualifications Submittal;
(3) Fail to use the certified minority business enterprise in the performance of the contract; or
(4) Pay the certified minority business enterprise solely for the use of its name in the Qualifications Submittal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for MCEC to reject the
Qualifications Submittal submitted by the Vendor on this project, and terminate any contract awarded based on the Qualifications Submittal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES The undersigned Vendor hereby certifies and agrees that it has fully complied with the State's veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

1. Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
2. Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Qualifications Submittal preference or a procurement contract;
3. Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
4. Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
5. Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
6. Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or had had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other State or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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

(1) Been convicted under State or federal statute of: (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a State or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Qualifications Submittals for a public or private contract;

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

(5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a State or federal antitrust statute for acts or omissions in connection with the submission of Qualifications Submittals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
   (a) §7201, Attempt to Evade or Defeat Tax;
   (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
   (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
   (d) §7206, Fraud and False Statements, or
   (e) §7207, Fraudulent Returns, Statements, or Other Documents;


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

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

   (a) A court: (i) Made the finding; and (ii) Decision became final; or
   (b) The finding was: (i) Made in a contested case under the Maryland Administrative Procedure Act; and (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

   (a) A court: (i) Made the finding; and (ii) Decision became final; or
   (b) The finding was: (i) Made in a contested case under the Maryland Administrative Procedure Act; and (ii) Not overturned on judicial review;
(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
(a) A court: (i) Made the finding; and (ii) Decision became final; or
(b) The finding was: (i) Made in a contested case under the Maryland Administrative Procedure Act; and (ii) Not overturned on judicial review; or
(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

____________________________________________________

____________________________________________________

E. AFFIRMATION REGARDING DEBARMENT I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension):

____________________________________________________

____________________________________________________

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

____________________________________________________

____________________________________________________

G. SUBCONTRACT AFFIRMATION I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.
H. AFFIRMATION REGARDING COLLUSION | FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Qualifications Submittal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Qualifications Submittal price of the Vendor or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Qualifications Submittal is submitted.

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

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17702, Annotated Code of Maryland.

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

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS) | FURTHER AFFIRM THAT: The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT: Any claims of environmental attributes made relating to a product or included in the Qualifications Submittal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R.
§260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N, ACKNOWLEDGEMENT

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

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

Date: ____________________
By: ________________________ (print name of Authorized Representative and Affiant)

__________________________ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH QUALIFICATIONS SUBMITTAL
MBE ATTACHMENT D-1A:
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE

PART 1 - INSTRUCTIONS
PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.

2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract’s MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.

3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.

4. Please refer to the MDOT MBE Directory at https://mbe.mdot.maryland.gov/directory/ to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code and the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit https://www.census.gov/eos/www/naics/. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. CAUTION: If the firm’s NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.

5. Guidelines Regarding MBE Prime Self-Performance. Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE
participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.

✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.

✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.

✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.

✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor’s Office of Small Minority & Women Business Affairs’ website for the MBE Prime Regulations Q&A for illustrative examples. http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.

7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

✓ **Regular Dealers:** Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer’s representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.
✓ Manufacturers: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.

✓ Brokers: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.

✓ Furnish and Install: The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS Code(s) to furnish and install materials necessary for successful contract completion may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

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

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

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

**Subgoals (if applicable)**

<table>
<thead>
<tr>
<th>Subgroup Category</th>
<th>Participation Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total African American MBE Participation:</td>
<td>%</td>
</tr>
<tr>
<td>Total Asian American MBE Participation:</td>
<td>%</td>
</tr>
<tr>
<td>Total Hispanic American MBE Participation:</td>
<td>%</td>
</tr>
<tr>
<td>Total Women-Owned MBE Participation:</td>
<td>%</td>
</tr>
</tbody>
</table>

**Overall Goal**

<table>
<thead>
<tr>
<th>Overall Participation</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total MBE Participation (include all categories):</td>
<td>%</td>
</tr>
</tbody>
</table>
PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

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

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

1. **MBE Participation (PLEASE CHECK ONLY ONE)** [Agency should insert the participation goal and subgoal amounts from the PRG and Subgoal Worksheet in the blanks below and delete any of the subgoals that do not apply to this solicitation and then delete this sentence of instruction.]

   - [ ] I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent and all of the following subgoals:
     - _____ Percent for African American-owned MBE firms
     - _____ Percent for Hispanic American-owned MBE firms
     - _____ Percent for Asian American-owned MBE firms
     - _____ Percent for Women-owned MBE firms

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

**OR**

- [ ] I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete PART 3, the MBE Participation Schedule for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.
Additional MBE Documentation

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

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

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

Information Provided to MBE firms

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.
PART 3 - MBE PARTICIPATION SCHEDULE

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total contract value allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Project Description</th>
<th>Project/Contract Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

List information for each certified MBE firm you agree to use to achieve the MBE participation goal and subgoals, if any. MBE PRIMES: Please complete both Sections A and B below.

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

<table>
<thead>
<tr>
<th>MBE Prime Firm</th>
<th>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _______% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:___________</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>MBE Certification Number:___________</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(If dually certified, check only one box.)</td>
<td></td>
</tr>
<tr>
<td>☐ African American-Owned</td>
<td>☐ Hispanic American-Owned</td>
</tr>
<tr>
<td>☐ Supplier</td>
<td>☐ Manufacturer</td>
</tr>
<tr>
<td>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _______%</td>
<td></td>
</tr>
<tr>
<td>Description of the Work to be performed with MBE prime’s own forces:</td>
<td></td>
</tr>
</tbody>
</table>

SECTION B: For all Contractors (including MBE Primers and MBE Primers in a Joint Venture)

<table>
<thead>
<tr>
<th>MBE Firm</th>
<th>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _______% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:___________</td>
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</tr>
<tr>
<td>(If dually certified, check only one box.)</td>
<td></td>
</tr>
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<td>☐ African American-Owned</td>
<td>☐ Hispanic American-Owned</td>
</tr>
<tr>
<td>☐ Supplier</td>
<td>☐ Manufacturer</td>
</tr>
<tr>
<td>Description of the Work to be Performed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| MBE Firm                                      | Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal):  
|                                             | % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.  
|                                             | □ Supplier  
|                                             | □ Manufacturer  
|                                             | □ Broker  
|                                             | □ Furnish and Install  
|                                             | □ Services  
|                                             | □ Other  
|                                             | Description of the Work to be Performed:  
|                                             |  
|                                             |  
|                                             |  
| MBE Certification Number:                      |  
|                                             |  
|                                             |  
|                                             |  
| (If dually certified, check only one box.)   |  
|                                             | □ African American-Owned  
|                                             | □ Hispanic American-Owned  
|                                             | □ Asian American-Owned  
|                                             | □ Women-Owned  
|                                             | □ Other MBE Classification  
| MBE Firm                                      | Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal):  
|                                             | % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.  
|                                             | □ Supplier  
|                                             | □ Manufacturer  
|                                             | □ Broker  
|                                             | □ Furnish and Install  
|                                             | □ Services  
|                                             | □ Other  
|                                             | Description of the Work to be Performed:  
|                                             |  
|                                             |  
|                                             |  
|                                             |  
| MBE Certification Number:                      |  
|                                             |  
|                                             |  
|                                             |  
| (If dually certified, check only one box.)   |  
|                                             | □ African American-Owned  
|                                             | □ Hispanic American-Owned  
|                                             | □ Asian American-Owned  
|                                             | □ Women-Owned  
|                                             | □ Other MBE Classification  
| MBE Firm                                      | Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal):  
|                                             | % Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.  
|                                             | □ Supplier  
|                                             | □ Manufacturer  
|                                             | □ Broker  
|                                             | □ Furnish and Install  
|                                             | □ Services  
|                                             | □ Other  
|                                             | Description of the Work to be Performed:  
|                                             |  
|                                             |  
|                                             |  
|                                             |  
| MBE Certification Number:                      |  
|                                             |  
|                                             |  
|                                             |  
| (If dually certified, check only one box.)   |  
|                                             | □ African American-Owned  
|                                             | □ Hispanic American-Owned  
|                                             | □ Asian American-Owned  
|                                             | □ Women-Owned  
|                                             | □ Other MBE Classification  

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL
GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

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

I. Definitions

MBE Goal(s) – "MBE Goal(s)" refers to the MBE participation goal and MBE participation subgoal(s).

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

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

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

MBE Firms – "MBE Firms" refers to a firm certified by the Maryland Department of Transportation ("MDOT") under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.
II. Types of Actions Agency will Consider

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

A. Identify Bid Items as Work for MBE Firms

   1. Identified Items of Work in Procurements

      (a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offoror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

      (b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

   2. Identified Items of Work by Bidders/Offerors

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

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

B. Identify MBE Firms to Solicit

   1. MBE Firms Identified in Procurements

      (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the bidder/offoror shall make all reasonable efforts to solicit those MBE firms.

      (b) Bidders/offorors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

   2. MBE Firms Identified by Bidders/Offerors

      (a) When the procurement does not include a list of Identified MBE Firms, bidders/offorors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

      (b) Any MBE Firms identified as available by the bidder/offoror should be certified to perform the Identified Items of Work.
C. Solicit MBEs

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

   (a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

   (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and

   (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

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

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

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

   (a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or

   (b) in writing via a method that differs from the method used for the initial written solicitation.

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

   (a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

   (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

   (a) the names, addresses, and telephone numbers of MBE Firms that were considered;

   (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

   (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. A bidder/offoror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a bidder’s/offoror’s failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm’s quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the bidder/offoror;

(b) the percentage difference between the MBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the bidder/offoror;

(c) the percentage that the MBE subcontractor’s quote represents of the overall contract amount;

(d) the number of MBE firms that the bidder/offoror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the bidder/offoror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The bidder/offoror may not use its price for self-performing work as a basis for rejecting a MBE Firm’s quote as excessive or unreasonable.

6. The "average of the other subcontractors’ quotes received" by the bidder/offoror refers to the average of the quotes received from all subcontractors. Bidder/offoror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A bidder/offoror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm’s capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offoror concludes is not acceptable, the bidder/offoror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offoror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.
E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeror; and

2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

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

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

B. Outreach/Solicitation/Negotiation

1. The record of the bidder’s/offeror’s compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). (Complete Outreach Efforts Compliance Statement – Attachment 2).

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

   (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (Complete Good Faith Efforts Attachment 1-C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations); and

   (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.
C. Rejected MBE Firms (Complete Good Faith Efforts Attachment 1-C, Part 3)

1. For each MBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. (Include copies of all quotes received.)

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.

2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.
Exhibit A

MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of ______________________________________ (Name of Minority firm) located at ____________________________________________ (Number) ____________________________________________ (Street) ____________________________________________ (City) ____________________________________________ (State) ____________________________________________ (Zip) was offered an opportunity to bid on Solicitation No. ________________________________
in __________________________ County by ______________________________________ (Name of Prime Contractor’s Firm) ____________________________________________ (Minority Firm), is either unavailable for the work/service or unable to prepare a bid for this project for the following reason(s):

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Signature of Minority Firm’s MBE Representative

__________________________________________ Title ________________________________

MDOT Certification # ____________________________________________________________________________ Telephone # ____________________________________________________________________________

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

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

__________________________________________ Title ________________________________

Signature of Prime Contractor Date
PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

D-16

RFP Template Version: 01/20/2017
GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST

PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE ___ OF ___

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

<table>
<thead>
<tr>
<th>Identified Items of Work</th>
<th>Was this work listed in the procurement?</th>
<th>Does bidder/offeror normally self-perform this work?</th>
<th>Was this work made available to MBE Firms? If no, explain why?</th>
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☐ Please check if Additional Sheets are attached.
GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform identified items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

<table>
<thead>
<tr>
<th>Name of Identified MBE Firm &amp; MBE Classification</th>
<th>Describe Item of Work Solicited</th>
<th>Initial Solicitation Date &amp; Method</th>
<th>Follow-up Solicitation Date &amp; Method</th>
<th>Details for Follow-up Calls</th>
<th>Quote Rec’d</th>
<th>Quote Used</th>
<th>Reason Quote Rejected</th>
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<td>Date: □ Phone □ Mail □ Facsimile □ Email</td>
<td>Time of Call: Spoke With: □ Yes □ No</td>
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<td>□ Used Other MBE □ Used Non-MBE □ Self-performing</td>
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□ Please check if Additional Sheets are attached.
G00D FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST

PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offeree is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

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<th>Prime Contractor</th>
<th>Project Description</th>
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<th>Describe Identified Items of Work Not Being Performed by MBE (Provide name)</th>
<th>Self-performing or Using Non-MBE (Provide name)</th>
<th>Amount of Non-MBE Quote</th>
<th>Name of Other Firms who Provided Quotes &amp; Whether MBE or Non-MBE</th>
<th>Amount Quoted</th>
<th>Indicate Reason Why MBE Quote Rejected &amp; Briefly Explain</th>
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☐ Please check if Additional Sheets are attached.
MBE Attachment D - 2
OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the bid/proposal submitted in response to Solicitation No.___________, I state the following:

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


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

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


4. Please Check One:

☐ This project does not involve bonding requirements.

☐ Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):


5. Please Check One:

☐ Bidder/Offeror did attend the pre-bid/pre-proposal conference.

☐ No pre-bid/pre-proposal meeting/conference was held.

☐ Bidder/Offeror did not attend the pre-bid/pre-proposal conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

RFP Template Version: 01/20/2017
MBE Attachment D-3A
MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT -1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that ____________________________ (Prime Contractor’s Name) is awarded the State contract in conjunction with Solicitation No. ____________________________, such Prime Contractor intends to enter into a subcontract with ____________________________ (Subcontractor’s Name) committing to participation by the MBE firm ____________________________ (MBE Name) with MDOT Certification Number ____________________________. Such subcontract will receive at least $ ____________________________ which equals to ___% of the Total Contract Amount

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<th>NAICS CODE</th>
<th>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)</th>
<th>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</th>
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for performing the following products/services for the Contract:

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

1. fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
2. fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
3. fail to use the certified Minority Business Enterprise in the performance of the Contract; or
4. pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

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<tr>
<th>PRIME CONTRACTOR</th>
<th>SUBCONTRACTOR</th>
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<td>Signature of Representative:</td>
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D-21

RFP Template Version: 01/20/2017
MBE Attachment D-3B
MBE PRIME - PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT __-IA) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

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

<table>
<thead>
<tr>
<th>NAICS CODE</th>
<th>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.</th>
<th>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</th>
<th>VALUE OF THE WORK</th>
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**MBE PRIME CONTRACTOR**

Signature of Representative: __________________________

Printed Name and Title: __________________________

____________________________

Firm’s Name: __________________________

Federal Identification Number: __________________________

Address: __________________________

Telephone: __________________________

Date: __________________________
MBE Attachment D-4A
{INSERT AGENCY NAME}
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report

<table>
<thead>
<tr>
<th>Report #:</th>
<th>Contract #:</th>
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<tr>
<th>Reporting Period (Month/Year):</th>
<th>Contracting Unit:</th>
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<table>
<thead>
<tr>
<th>Prime Contractor:</th>
<th>Contact Person:</th>
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<th>Address:</th>
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<th>City:</th>
<th>State:</th>
<th>ZIP:</th>
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<table>
<thead>
<tr>
<th>MBE Subcontractor Name:</th>
<th>Contact Person:</th>
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<table>
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<th>Phone:</th>
<th>Fax:</th>
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</table>

Subcontractor Services Provided:

<table>
<thead>
<tr>
<th>List all payments made to MBE subcontractor named above during this reporting period:</th>
<th>List dates and amounts of any outstanding invoices:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invoice#</td>
<td>Amount</td>
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<td>2.</td>
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<td>3.</td>
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<td>4.</td>
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<tr>
<td>Total Dollars Paid: $</td>
<td>Total Dollars Unpaid: $</td>
</tr>
</tbody>
</table>

- If more than one MBE subcontractor is used for this contract, you must use separate 1-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment 1-4B

Signature: ___________________________ Date: _____________

Print Name: _________________________ Title: ___________________________

- Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):
  {INSERT AGENCY}
  {INSERT DEPARTMENT}
  {INSERT CONTACT NAME}
  {INSERT MAILING ADDRESS}
  {INSERT TELEPHONE} {INSERT FAX} {INSERT E-MAIL ADDRESS}
MBE Prime Contractor: ________________________________
Certification Number: ________________________________
Report #: ________________________________
Reporting Period (Month/Year): ________________________________

MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided.

Note: Please number reports in sequence.

Contract #: ________________________________
Contracting Unit: ________________________________
Contract Amount: ________________________________
Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: ________________________________
Project Begin Date: ________________________________
Project End Date: ________________________________

Contact Person: ________________________________
Address: ________________________________
City: ________________________________ State: ________________________________ ZIP: ________________________________
Phone: ________________________________ Fax: ________________________________ E-mail: ________________________________

<table>
<thead>
<tr>
<th>Invoice Number</th>
<th>Value of the Work</th>
<th>NAICS Code</th>
<th>Description of the Work</th>
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Signature: ________________________________ Date: ________________________________

(Required) Print Name: ________________________________ Title: ________________________________

* Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):
  {INSERT AGENCY}
  {INSERT DEPARTMENT}
  {INSERT CONTACT NAME}
  {INSERT MAILING ADDRESS}
  {INSERT TELEPHONE} {INSERT FAX} {INSERT E-MAIL ADDRESS}
MBE ATTACHMENT D-5
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

<table>
<thead>
<tr>
<th>Report#:</th>
<th>Contract #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting Period (Month/Year):</td>
<td>Contracting Unit:</td>
</tr>
<tr>
<td>Report is due by the ___ of the month following the month the services were performed.</td>
<td>MBE Subcontract Amount:</td>
</tr>
<tr>
<td></td>
<td>Project Begin Date:</td>
</tr>
<tr>
<td></td>
<td>Project End Date:</td>
</tr>
<tr>
<td></td>
<td>Services Provided:</td>
</tr>
</tbody>
</table>

**MBE Subcontractor Name:**

**MDOT Certification #:**

**Contact Person:**

**E-mail:**

**Address:**

**City:**

**State:**

**ZIP:**

**Phone:**

**Fax:**

**Subcontractor Services Provided:**

<table>
<thead>
<tr>
<th>Invoice Amt</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>List all payments received from Prime Contractor during reporting period indicated above.</td>
<td>List dates and amounts of any unpaid invoices over 30 days old.</td>
</tr>
<tr>
<td>1.</td>
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<td>2.</td>
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<td>3.</td>
<td>3.</td>
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</table>

**Total Dollars Paid: $ __________________**

**Total Dollars Unpaid: $ __________________**

**Prime Contractor:**

**Contact Person:**

**Signature:** ________________________ **Date:** ________________________

**Print Name:** ________________________ **Title:** ________________________

- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**
  
  {INSERT AGENCY}
  {INSERT DEPARTMENT}
  {INSERT CONTACT NAME}
  {INSERT MAILING ADDRESS}
  {INSERT TELEPHONE} {INSERT FAX} {INSERT E-MAIL ADDRESS}
Attachment E – Living Wage Requirements For Service Contracts

Living Wage Requirements for Service Contracts

A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Vendor or SubVendor who performs work on a State contract for services that is valued at $100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on a State Contract and spends at least one-half of the employee’s time during any work week on a State Contract.

B. The Living Wage Law does not apply to:

   (1) A Vendor who:
      (a) Has a State contract for services valued at less than $100,000, or
      (b) Employs 10 or fewer employees and has a State contract for services valued at less than $500,000.

   (2) A SubVendor who:
      (a) Performs work on a State contract for services valued at less than $100,000,
      (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than $500,000, or
      (c) Performs work for a Vendor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.

   (3) Service contracts for the following:
      (a) Services with a Public Service Company;
      (b) Services with a nonprofit organization;
      (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (“Unit”); or
      (d) Services between a Unit and a County or Baltimore City.

C. If the Unit responsible for the MCEC contract for services determines that application of the Living Wage would conflict with any applicable federal program, the Living Wage does not apply to the contract or program.

D. A Vendor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Vendor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

E. Each Vendor/SubVendor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days.
after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry’s website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

G. A Vendor/SubVendor who reduces the wages paid to an employee based on the employer’s share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Vendor/SubVendor who reduces the wages paid to an employee based on the employer’s share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.

H. A Vendor/SubVendor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer’s contribution to an employee’s deferred compensation plan. A Vendor/SubVendor who reduces the wages paid to an employee based on the employer’s contribution to an employee’s deferred compensation plan shall not lower the employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.

I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Vendor/SubVendor violated a provision of this title or regulations of the Commissioner, the Vendor/SubVendor shall pay restitution to each affected employee, and the State may assess liquidated damages of $20 per day for each employee paid less than the Living Wage.

J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website http://www.dllr. State.md.us/labor/prev/livingwage.shtml.
ATTACHMENT E-1

Maryland Living Wage Requirements Affidavit of Agreement

Solicitation Number RFQ—MSU2020

(submit with Qualifications Submittal)

Contract No. ____________________________________________

Name of Vendor __________________________________________

Address ________________________________________________

City __________________________ State _______ Zip Code________

If the Contract Is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Vendor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

_____ Vendor is a nonprofit organization
_____ Vendor is a public service company
_____ Vendor employs 10 or fewer employees and the proposed contract value is less than $500,000
_____ Vendor employs more than 10 employees and the proposed contract value is less than $100,000

If the Contract Is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above-named Vendor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Vendor agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its SubVendors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Vendor agrees to comply with, and ensure its SubVendors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. __________________________ (initial here if applicable) The Vendor affirms it has no covered employees for the following reasons: (check all that apply):

_____ The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or

The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the MCEC contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: ____________________________________________

_________________________________________ Date

Signature of Authorized Representative

Title

_________________________________________ Date

Witness Name (Typed or Printed)

_________________________________________ Date

Witness Signature

SUBMIT THIS AFFIDAVIT WITH QUALIFICATIONS SUBMITTAL
Attachment F – Conflict Of Interest Affidavit And Disclosure

Solicitation Number RFQ—MSU2020

Reference COMAR 21.05.08.08

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the MCEC, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B (64) and includes a Vendor, Vendor, consultant, or subVendor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Qualifications Submittal is made.

C. The Vendor warrants that, except as disclosed in Section D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail — attach additional sheets if necessary):

E. The Vendor agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Vendor shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Vendor has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Vendor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

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

Date: ___________________________ By: ______________________________________
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH QUALIFICATIONS SUBMITTAL
THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made by and between the Maryland Clean Energy Center, a body politic and corporate and a public instrumentality of the State of Maryland ("MCEC") and ________________________________ (the "Vendor").

RECITALS

1. The Vendor has been awarded a Master Services Agreement (together with any Task Order or any other document of contract entered into by the Vendor in connection with the Master Services Agreement, the "Contract") following the solicitation for RFQ—MSU2020 which is entered into in connection with services to be performed on the campus of Morgan State University ("MSU"); and

2. In order for the Vendor to perform the work required under the Contract, it will be necessary for MCEC at times to provide the Vendor and the Vendor's employees, agents, and subVendors (collectively "Vendor's Personnel") with access to certain information MCEC deems confidential (the "Confidential Information").

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, "Confidential Information" means (1) any and all information provided by or made available by MCEC or MSU to the Vendor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions Section 4-101(h)) and Protected Health Information (PHI) that is provided by a person or entity to the Vendor in connection with this Contract. Confidential Information includes, by way of example only, information that the Vendor views, takes notes from, copies (if MCEC agrees in writing to permit copying), possesses or is otherwise provided access to and use of by MCEC or MSU in relation to the Contract.

2. The Vendor shall not, without MCEC's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Vendor shall limit access to the Confidential Information to the Vendor's Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Vendor's Personnel are attached hereto and made a part hereof as Attachment G-1.

The Vendor shall update Attachment G-1 by adding additional names (whether Vendor's personnel or a subVendor's personnel) as needed, from time to time.
3. If the Vendor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Vendor's performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Vendor shall first obtain the written consent of MCEC to any such dissemination. MCEC may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. The Vendor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Vendor shall promptly advise MCEC in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Vendor's Personnel or the Vendor's former Personnel. Vendor shall, at its own expense, cooperate with MCEC in seeking injunctive or other equitable relief against any such person(s).

6. The Vendor shall, at its own expense, return to MCEC or MSU, as the case may be, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. The Vendor shall complete and submit Attachment G-2 when returning the Confidential Information to MCEC or MSU. At such time, the Vendor shall also permanently delete any Confidential Information stored electronically by the Vendor.

7. A breach of this Agreement by the Vendor or the Vendor's Personnel shall constitute a breach of the Contract between the Vendor and MCEC.

8. Vendor acknowledges that any failure by the Vendor or the Vendor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to MCEC and that monetary damages may inadequate to compensate MCEC for such breach. Accordingly, the Vendor agrees that MCEC may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Vendor consents to personal jurisdiction in the Maryland State Courts. MCEC's rights and remedies hereunder are cumulative and MCEC expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Vendor and the Vendor's Personnel for a failure to comply with the requirements of this Agreement. In the event MCEC suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Vendor or any of the Vendor's Personnel to comply with the requirements of this Agreement, the Vendor shall hold harmless and indemnify MCEC from and against any such losses, damages, liabilities, expenses, and costs.

9. Vendor and each of the Vendor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Vendor shall provide originals of such executed Agreements to MCEC.

10. The parties further agree that: (a) This Agreement shall be governed by the laws of the State of Maryland; (b) The rights and obligations of the Vendor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent
of MCEC; (c) MCEC makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (e) Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; (f) The Recitals are not merely prefatory but are an integral part hereof; and (g) The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Vendor: ________________________________

By: ________________________________ (SEAL)

Printed Name: ________________________________

Title: ________________________________

Date: ________________________________

Maryland Clean Energy Center

By: ________________________________

Printed Name: ________________________________

Title: ________________________________

Date: ________________________________
NON-DISCLOSURE AGREEMENT - ATTACHMENT G-1

LIST OF VENDOR’S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

<table>
<thead>
<tr>
<th>Printed Name and Address of Individual/Agent</th>
<th>Employee (E) or Agent (A)</th>
<th>Signature</th>
<th>Date</th>
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NON-DISCLOSURE AGREEMENT – ATTACHMENT G-2

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the Maryland Clean Energy Center (MCEC) and ________________________________ ("Vendor") dated ______________________, 2020 ("Agreement") is attached hereto and is hereby returned to MCEC in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Vendor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: ___________________________

NAME OF VENDOR: __________________________

BY: ______________________________________
   (Signature)

TITLE: ____________________________________
   (Authorized Representative and Affiant)
Attachment H – Mercury Affidavit
Solicitation Number RFQ—MSU2020

MERCURY AFFIDAVIT

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

I, ___________________________________________ (name of affiant) am the
______________________________________________ (title) and the duly authorized
representative
of
_____________________________________________ (name of the business). I possess the legal authority to make this affidavit on behalf of myself and the
business for which I am acting.

MERCURY CONTENT INFORMATION:

[ ] The product(s) offered do not contain mercury.

OR

[ ] The product(s) offered do contain mercury.
   In an attachment to this Mercury Affidavit:
   (1) Describe the product or product component that contains mercury.
   (2) Provide the amount of mercury that is contained in the product or product component. Indicate the unit of measure being used.

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

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

____________________________________  By: ______________________________
Date  Signature
Print Name: ________________________________________________

Authorized Representative and Affiant

SUBMIT THIS AFFIDAVIT WITH QUALIFICATIONS SUBMITTAL
Attachment I – Location Of The Performance Of Services Disclosure

Solicitation Number RFQ—MSU2020

(submit with Qualifications Submittal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Qualifications Submittal submitted in response to Solicitation No. ________________________________, the following disclosures are hereby made:

1. At the time of Qualifications Submittal submission, the Vendor and/or its proposed subcontractors:

   ___ have plans

   ___ have no plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Vendor or its proposed subcontractors, the Vendor shall answer the following (attach additional pages if necessary):

   a. Location(s) services will be performed:

      __________________________________________

      __________________________________________

      __________________________________________

   b. Reasons why it is necessary or advantageous to perform services outside the United States:

      __________________________________________

      __________________________________________

      __________________________________________

The undersigned, being an authorized representative of the Vendor, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: ____________________________

Vendor Name: ____________________________

By: ____________________________

Name: ____________________________

Title: ____________________________

Please be advised that MCEC may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States;

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or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.
MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is made this ____ day of ________________, 2020, by and between ____________________, a __________________________ (“Vendor”) and the MARYLAND CLEAN ENERGY CENTER, a body politic and corporate and a public instrumentality of the State of Maryland (“MCEC”).

Recitals

1. Vendor is a qualified energy services company eligible to provide services under the Maryland Department of General Services Indefinite Delivery Contract I.D. No. EPC-IDC-8.0, attached to this Contract as Exhibit B (the “IDC”).

2. Pursuant to a Request for Qualifications (RFQ—MSU2020) (the “RFQ”), Vendor has been selected to assist MCEC with the delivery of energy performance services, energy-related infrastructure, and other energy related projects at the campus of Morgan State University (“MSU”).

3. This Contract incorporates and is subject to all of the terms of the IDC, except as expressly provided in the RFQ, this Contract, or any Project Document.

NOW, THEREFORE, in consideration of the promises and the covenants in this Contract, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

In addition to words that are defined in other provisions of this Contract, including the Recitals, the following words have the meanings indicated. If a term is not defined in this Contract, it shall have the meaning specified in the RFQ or the IDC, as the case may be:

1.1 “COMAR” means Code of Maryland Regulations.

1.2 “Contract” means this Master Services Agreement, together with the RFQ, the IDC, and any other document, instrument, attachment, exhibit, submittal, or contract which is related to, submitted with, or attached to any of the prior listed documents, as any of them may be amended from time to time.

1.3 “Contract Price” means the price for a Project as set forth in the Project Documents for that Project.

1.4 “Project” means a specific project on the MSU campus initiated with a Task Order issued by MCEC under the terms of this Contract.
1.5 "Project Document(s)" means this Contract and any contract, document, or instrument related to a Project, including, a Task Order, a Phase I Proposal, an Investment Grade Audit, a Phase I Contract, a Phase II Contract, plans and specifications and construction drawings developed by Vendor, and any other document, instrument, or contract which is related to, submitted with, or attached to any of the prior listed documents or this Contract, as any of them may be amended from time to time.

1.6 "State" means the State of Maryland.

2. Scope of Contract

2.1 This Contract is a Master Services Contract pursuant to which Vendor shall provide deliverables, programs, goods, and services related to the MSU campus (i) specified in the Scope of Work in the IDC on the MSU campus and (ii) other energy related projects, as requested by MCEC in writing (the "Scope"). This Contract includes Exhibits A-D attached to and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFQ  
Exhibit B – The IDC  
Exhibit C – MCEC Contract Affidavit  
Exhibit D – The Qualifications Submittal submitted under the RFQ

2.2 All work undertaken under this Contract or any Project Document shall incorporate the terms of, and be subject to, the terms and requirements of the IDC, unless MCEC agrees otherwise in writing.

2.3 A Project under this Contract will be initiated by a written Task Order issued by MCEC.

2.4 For Energy Performance Contract Projects, upon issuance of a Task Order, Vendor shall have 30 days to prepare a Phase I Proposal for the Project. Upon written approval by MCEC of a Phase I Proposal, Vendor shall sign a Phase I Contract and commence completion of a Phase I—Preliminary Design and Development Phase for the Project. Upon written approval by MCEC of a completed Phase I, Vendor shall sign a Phase II Contract with MCEC and commence Phase II of the Project.

2.5 If a Project is not an Energy Performance Contract Project, the terms of the RFQ and the IDC shall apply to the Project to the extent applicable. The determination of the applicability of an IDC provision to a Project shall be made by MCEC in its sole and absolute discretion. MCEC will notify Vendor of the process and documents which will be required for a non-Energy Performance Contract Project.

2.6 MCEC may, at any time, by written order, make changes in the work or a Project within the general scope of this Contract or Project Documents. No other order, statement, or
conduct of MCEC or any person shall be treated as a change or entitle Vendor to an equitable adjustment under this section. Except as otherwise provided in this Contract or any Project Document, if any change under this section causes an increase or decrease in Vendor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract Price shall be made and the appropriate Project Documents shall be modified in writing accordingly. Vendor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by Vendor shall be allowed if asserted after final payment of the Contract Price for a Project. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse Vendor from proceeding with the Project Documents for a Project as changed.

2.7 While MCEC may, at any time, by written change order, make unilateral changes in the work or a Project within the general scope of this Contract or any Project Document as provided in Section 2.2 above, this Contract or any Project Document may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; and (b) all parties sign the modification.

2.8 This Contract does not grant an exclusive right to Vendor to perform work on the MSU campus and Vendor acknowledges that MCEC and/or MSU may award contracts to other contractors for work or projects which are described in the Scope. Vendor further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract. MCEC, or its designee, shall have the sole discretion to determine which contractor shall be assigned to handle a particular project or specific work and shall have the further right to assign a particular project or specific work to another contractor if MCEC, or its designee, determines such action to be in the best interest of MCEC and/or MSU.

3. **Period of Performance**

3.1 The term of this Contract begins on the date set forth at the beginning of this Contract. This Contract shall terminate on September 1, 2025.

3.2 MCEC, at its sole option, has the unilateral right to extend the term of this Contract for one or more additional terms not to exceed five (5) years in the aggregate. Vendor shall be notified prior to the end of the initial term and or each extension whether the Contract will be renewed and what the length of the renewal term (if any) will be.

3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of this Contract.

4. **Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in the Project Documents for a Project and subject to Sections 4.2 and 16 below, MCEC shall pay Vendor in accordance with the terms of the Project Documents.
4.2 Payments under any Project Document will be made by MCEC to Vendor only from corresponding funds received by MCEC from MSU or which are otherwise available for that purpose. MCEC will not, and is under no obligation to, pay Vendor for any work if MCEC does not have funds, either from MSU or otherwise available for the Project, and designated to pay for work of Vendor under the corresponding Project Documents. The obligation to pay amounts under any Project Document is not a direct or indirect obligation of MCEC or the State. Payments being held as provided in Section 4.4 are not available for payment.

4.3 Subject to Sections 4.2 and 16, payments to Vendor shall be made no later than thirty (30) days after MCEC’s receipt of a proper invoice for services provided by Vendor, acceptance by MCEC of services provided by Vendor, and pursuant to the conditions outlined in Section 4 of this Contract or the appropriate Project Documents. Each invoice for services rendered must include Vendor’s Federal Tax Identification or Social Security Number set forth in a form W-9 provided to MCEC by Vendor. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Electronic funds transfer shall be used by MCEC to pay Vendor pursuant to this Contract and any other MCEC payments due Vendor unless MCEC grants Vendor an exemption.

4.4 In addition to any other available remedies, MCEC and MSU have the right to reduce or withhold payments under any or all Project Documents (including the Project Documents for multiple Projects) in the event Vendor does not provide MCEC and MSU with all required deliverables within the timeframe specified in any Project Document or Vendor otherwise breaches the terms and conditions of this Contract or any Project Document.

4.5 Payment of an invoice by MCEC is not evidence that services were rendered as required under this Contract or the appropriate Project Documents.

5. Rights to Records

5.1 Vendor agrees that all documents and materials including software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by Vendor for purposes of this Contract or any Project Document shall be the sole property of MCEC and shall be available to MCEC at any time. MCEC shall have the right to use the same without restriction and without compensation to Vendor other than that specifically provided by this Contract or any Project Document.

5.2 Vendor agrees that at all times during the term of this Contract or any Project Document and thereafter, works created as a deliverable under this Contract or any Project Document, and services performed under this Contract or any Project Document shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract or any Project Document are not works made for hire for MCEC, Vendor hereby relinquishes, transfers, and assigns to MCEC all of its rights, title, and interest (including all intellectual property rights) to all such products created
under this Contract or any Project Document, and will cooperate reasonably with MCEC in effectuating and registering any necessary assignments.

5.3 Vendor shall report to MCEC, promptly and in written detail, each notice or claim of copyright infringement received by Vendor with respect to all data delivered under this Contract or any Project Document.

5.4 Vendor shall not affix any restrictive markings upon any data, documentation, or other materials provided to MCEC under this Contract or any Project Document and if such markings are affixed, MCEC shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination of the Contract or any Project Document, Vendor, at its own expense, shall deliver any equipment, software, or other property provided by MCEC to the place designated by MCEC.

6. **Exclusive Use**

6.1 MCEC shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by Vendor in connection with this Contract or any Project Document. If any material, including software, is capable of being copyrighted, MCEC shall be the copyright owner and Vendor may copyright material connected with a Project only with the express written approval of MCEC.

6.2 Except as may otherwise be set forth in this Contract or any Project Document, Vendor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Vendor by MCEC or MSU or developed by Vendor relating to the Contract or any Project Document, except that Vendor may provide said information to any of its officers, employees and subVendors who Vendor requires to have said information for fulfillment of Vendor’s obligations hereunder. Each officer, employee and/or subVendor to whom any of MCEC’s or MSU’s confidential information is to be disclosed shall be advised by Vendor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract or any Project Document.

7. **Patents, Copyrights, and Intellectual Property**

7.1 If Vendor furnishes any design, equipment, software, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, Vendor shall obtain the necessary permission or license to permit MCEC and MSU to use such item or items.

7.2 Vendor will defend or settle, at its own expense, any claim or suit against MCEC or MSU alleging that any such item furnished by Vendor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party’s patent, trademark, service mark, trade secret, or copyright, Vendor will defend MCEC and MSU
against that claim at Vendor’s expense and will pay all damages, costs, and attorneys’ fees that a
court finally awards, provided MCEC: (a) promptly notifies Vendor in writing of the claim; and
(b) allows Vendor to control and cooperates with Vendor in, the defense and any related
settlement negotiations. The obligations of this paragraph are in addition to those stated in
Section 7.3 below.

7.3 If any products furnished by Vendor become, or in Vendor’s opinion are likely to
become, the subject of a claim of infringement, Vendor will, at its option and expense: (a)
procure for MCEC or MSU, as the case may be, the right to continue using the applicable item;
(b) replace the product with a non-infringing product substantially complying with the item’s
specifications; or (c) modify the item so that it becomes non-infringing and performs in a
substantially similar manner to the original item.

8. Confidential or Proprietary Information and Documentation

8.1 Subject to the Maryland Public Information Act and any other applicable laws,
including HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the
implementation of regulations promulgated pursuant thereto, all confidential or proprietary
information and documentation relating to Vendor, MCEC, or MSU (including any information
or data stored within Vendor’s computer systems) shall be held in absolute confidence by the
parties. Vendor, MCEC, or MSU shall, however, be permitted to disclose relevant confidential
information to its officers, agents, and employees to the extent that such disclosure is necessary
for the performance of their duties under this Contract or any Project Document, provided that
the data may be collected, used, disclosed, stored, and disseminated only as provided by and
consistent with the law. The provisions of this section shall not apply to information that: (a) is
lawfully in the public domain; (b) has been independently developed by Vendor, MCEC, or
MSU without violation of this Contract or any Project Document; (c) was already in the
possession of Vendor, MCEC, or MSU; (d) was supplied to Vendor, MCEC, or MSU by a third
party lawfully in possession thereof and legally permitted to further disclose the information; or
(e) which Vendor, MCEC, or MSU is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

In the event of loss of any MCEC or MSU data or records where such loss is due to the
intentional act or omission or negligence of Vendor or any of its subVendors or agents, Vendor
shall be responsible for recreating such lost data in the manner and on the schedule set by
MCEC. Vendor shall ensure that all data is backed up and recoverable by Vendor. Vendor shall
use its best efforts to assure that at no time shall any actions undertaken by Vendor under this
Contract or any Project Document (or any failures to act when Vendor has a duty to act) damage
or create any vulnerabilities in data bases, systems, platforms, and/or applications with which
Vendor is working hereunder.

10. Indemnification
10.1 Vendor shall hold harmless and indemnify MCEC, MSU, and the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable a Project or to the performance or nonperformance of Vendor or its subVendors under this Contract or any Project Document.

10.2 This indemnification clause shall not be construed to mean that Vendor shall indemnify MCEC, MSU, and the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable solely to the gross negligence of MCEC, MSU, and the State or their respective employees.

10.3 MCEC, MSU, and the State have no obligation to provide legal counsel or defense to Vendor or its subVendors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against Vendor or its subVendors as a result of or relating to a Project or Vendor's performance under this Contract or any Project Document.

10.4 MCEC, MSU, and the State have no obligation for the payment of any judgments or the settlement of any claims against Vendor or its subVendors as a result of or relating to a Project or Vendor's performance under this Contract or any Project Document.

10.5 Vendor shall immediately notify MCEC of any claim or lawsuit made or filed against Vendor or its subVendors regarding any matter resulting from, or relating to, a Project or Vendor's obligations under the Contract or any Project Document, and will cooperate, assist, and consult with MCEC in the defense or investigation of any claim, lawsuit, or action made or filed against MCEC as a result of, or relating to, Vendor's performance under this Contract or any Project Document.

10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

No official or employee of MCEC or MSU, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract or any Project Document, shall, during the pendency and term of this Contract or any Project Document and while serving as an official or employee of MCEC or MSU, become or be an employee of Vendor or any entity that is a subVendor on this Contract or any Project Document.

12. Disputes

This Contract and all Project Documents shall be subject to the provisions of Md. Code Ann., MCEC Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, Vendor shall proceed diligently with the performance of the Contract or any Project Document in accordance with MCEC's decision. Unless a lesser period is provided by applicable statute, regulation, the Contract, or any Project Document, Vendor must file a written notice of claim with MCEC.
within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under or any Project Document, Vendor must submit to MCEC its written claim containing the information specified in COMAR 21.10.04.02. In the event there is a dispute related to a particular Project, MCEC may assign all of its rights in this Contract or any Project Documents for a specific Project to MSU, in which case MSU shall succeed to all of the rights and remedies available to MCEC under the Project Documents, this Contract, and the IDC, as the case may be.

13. Maryland Law

13.1 This Contract and all Project Documents shall be construed, interpreted, and enforced according to the laws of the State of Maryland. Any action or claim brought in connection with this Contract, any Project Document, or a Project must be brought in the courts of the State.

13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.

13.3 Any references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

If MCEC fails to receive funds from MSU for the payment of work under any Project Document, Vendor’s sole remedy is to stop all work on the related Project if there is not an ongoing Dispute (other than failure to pay by MCEC) concerning the related Project (but continue all work on any other Projects for which payments to Vendor are current). If (a) Vendor has not received corresponding funds from MSU, (b) the failure to pay has continued for a period of 90 days after all other conditions to payment have been met, and (c) Vendor is not then continuing work on another Project for which all payments are current, Vendor may cancel this Contract and the Project Documents. Upon cancellation all work performed shall belong to MCEC and MCEC and Vendor shall have no further claims or obligations with respect to each other.

17. Termination for Default

If Vendor fails to fulfill its obligations under this Contract or any Project Document properly and on time, or otherwise violates any provision of this Contract or any Project Document, MCEC may terminate this Contract and any or all Project Documents, by written notice to Vendor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by Vendor shall, at MCEC’s option, become MCEC’s property. Subject to Sections 4.2 and 16, MCEC shall pay Vendor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Vendor’s breach. If the damages are more than the compensation payable to Vendor, Vendor will remain liable after termination and MCEC can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B. A breach or default under this Contract or any Project Document shall constitute a cross-breach or cross-default under this Contract and any other Project Document.

18. Termination for Convenience

The performance of work under this Contract or any Project Document may be terminated by MCEC in accordance with this clause in whole, or from time to time in part, whenever MCEC shall determine that such termination is in the best interest of MCEC. Subject to Sections 4.2 and 16 and the right of MCEC to withhold payments for Disputes or breach of contract, MCEC will pay all reasonable costs associated with this Contract or any Project Document, that Vendor has incurred up to the date of termination. Vendor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

19. Delays and Extensions of Time

19.1 Vendor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or
hinderances from any cause whatsoever during the progress of any portion of the work specified in this Contract or any Project Document.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Vendor, including but not restricted to, acts of God, acts of the public enemy, acts of MCEC in either its sovereign or contractual capacity, acts of MSU, acts of another contractor in the performance of a contract with MCEC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subVendors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Vendor or subVendors or suppliers.

20. Suspension of Work

MCEC unilaterally may order Vendor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as MCEC may determine to be appropriate for the convenience of MCEC.

21. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

Vendor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with State or its agencies during a calendar year under which the business is to receive in the aggregate, $100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches $100,000, file with MCEC certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

Vendor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement 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 contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the
six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.State.md.us/campaign_finance/index.html.

24. Documents Retention and Inspection Clause

Vendor and subVendors shall retain and maintain all records and documents relating to this Contract or any Project Document for a period of five (5) years after final payment by MCEC hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of MCEC or its designee, at all reasonable times. All records related in any way to this Contract or any Project Document are to be retained for the entire time provided under this section. In the event of any audit, Vendor shall provide assistance to MCEC, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract or any Project Document.

25. Right to Audit

25.1 MCEC reserves the right, at its sole discretion and at any time, to perform an audit of Vendor’s and/or subVendor’s performance under this Contract or any Project Document. An audit is defined as a planned and documented independent activity performed by qualified personnel, including MCEC and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) Vendor’s compliance with this Contract or any Project Document, including adequacy and compliance with established procedures and internal controls over this Contract or any Project Document services being performed for MCEC.

25.2 Upon three (3) Business Days’ notice, Vendor and/or any subVendors shall provide MCEC reasonable access to their respective records to verify conformance to the terms of the Contract or any Project Document. MCEC may conduct these audits with any or all of its own internal resources or by securing the services of a third-party accounting or audit firm, solely at MCEC’s election. MEC may copy, at its own expense, any record related to the services performed and provided under this Contract or any Project Document.

25.3 The right to audit shall include any of Vendor’s subVendors, including any lower tier subVendor(s) that provide essential support to the services under this Contract or any Project Document. Vendor and/or subVendor(s) shall ensure MCEC has the right to audit such subVendor(s).

25.4 Vendor and/or subVendors shall cooperate with MCEC and MCEC’s designated accountant or auditor and shall provide the necessary assistance for MCEC and MCEC’s designated accountant or auditor to conduct the audit.

25.5 This Section shall survive expiration or termination of the Contract or any Project Document.
26. **Representations and Warranties**

Vendor hereby represents and warrants that:

26.1 It is qualified to do business in the State and that it will take any action as, from time to time, may be necessary to remain so qualified;

26.2 It is not in arrears with respect to the payment of any monies due and owing the State, any department or unit thereof, or any political subdivision of the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

26.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract or any Project Document; and

26.4 It is, and shall remain, a qualified energy services company under the terms of the IDC, and is, and shall remain, in compliance with all of the terms of the IDC and any contract entered into under the IDC.

26.5 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.

27. **Subcontracting; Assignment**

27.1 Vendor may not subcontract any portion of the services provided under this Contract or any Project Document without obtaining the prior written approval of MSEC. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, any Project Document, exhibits, submittals, or attachments. MSEC shall not be responsible for fulfillment of Vendor’s obligations to its subVendors.

27.2 Vendor may not assign this Contract or any Project Document, nor any of its rights or obligations under this Contract or any Project Document, without the prior written approval of MSEC; provided, however, that a Vendor may assign monies receivable under a Project Document after due notice to MSEC.

27.3 MSEC may assign, without the consent of Vendor, any or all of its rights, titles, or interests in, and obligations under, this Contract or any Project Document to the State, any of its agencies or instrumentalities, MSU, or any entity designated by the Governor or the Maryland General Assembly. Any other assignment by MSEC requires the prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned, or delayed.

28. **Liability**

For breach of this Contract or any Project Document, negligence, misrepresentation, or any other contract or tort claim, Vendor shall be liable to MSEC and MSU as follows:
28.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

28.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

28.3 For all losses by MCEC or MSU; and

28.4 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form Vendor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if MCEC is not immune from liability for claims arising under Section 10.

29. Commercial Nondiscrimination

29.1 As a condition of entering into this Contract, Vendor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Vendor may not discriminate on the basis of race, color, religion, ancestry or 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 subVendors, vendors, suppliers, or commercial customers, nor shall Vendor retaliate against any person for reporting instances of such discrimination. Vendor shall provide equal opportunity for subVendors, 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. Vendor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Vendor from participating in MCEC contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Vendor shall be deemed to have made this representation and warranty each time it enters into a Project Document.

29.2 Vendor shall include the above Commercial Nondiscrimination clause, or similar clause approved by MCEC, in all subcontracts.

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

30. **Prompt Pay Requirements**

30.1 If Vendor withholds payment of an undisputed amount to its subVendor, MCEC, at its option and in its sole discretion, may take one or more of the following actions:

(a) Not process further payments to Vendor until payment to a subVendor is verified;

(b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

(c) Pay or cause payment of the undisputed amount to the subVendor from monies otherwise due or that may become due;

(d) Place a payment for an undisputed amount in an interest-bearing escrow account; or

(e) Take other or further actions as appropriate to resolve the withheld payment.

30.2 An “undisputed amount” means an amount owed by Vendor to the subVendor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation:

(a) Retainage which had been withheld and is, by the terms of the agreement between Vendor and subVendor, due to be distributed to the subVendor; and

(b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

30.3 An act, failure to act, or decision of MCEC or a representative of MCEC, concerning a withheld payment between Vendor and a subVendor under this provision, may not:

(a) Affect the rights of the contracting parties under any other provision of law;

(b) Be used as evidence on the merits of a dispute between MCEC and Vendor in any other proceeding; or

(c) Result in liability against or prejudice the rights of MCEC.

30.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subVendors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
30.5 To ensure compliance with certified MBE subcontract participation goals, MCEC may, consistent with COMAR 21.11.03.13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate: (i) Inspecting any relevant records of Vendor; (ii) Inspecting the jobsite; and (iii) Interviewing subVendors and workers.

Verification shall include a review of the: (i) Vendor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subVendors and the reason for nonpayment; and (ii) The monthly report of each certified MBE subVendor, which lists payments received from Vendor in the preceding thirty (30) days and invoices for which the subVendor has not been paid.

(b) If MCEC determines that Vendor is not in compliance with certified MBE participation goals, then MCEC will notify Vendor in writing of its findings, and will require Vendor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring Vendor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(c) If MCEC determines that Vendor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that MCEC requires, then MCEC may: (i) Terminate the Contract or Project Documents; (ii) Refer the matter to the Office of the Attorney General for appropriate action; or (iii) Initiate any other specific remedy identified by the Contract or Project Documents, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

(d) Upon completion of the Contract or Project Documents, but before final payment or release of retainage or both, Vendor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subVendors.

31. **Living Wage**

If a Vendor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

32. **Use of Estimated Quantities**
Unless specifically indicated otherwise in MCEC’s solicitation or other controlling documents related to the Scope, any sample amounts provided are estimates only and MCEC does not guarantee a minimum or maximum number of units or usage in the performance of this Contract or any Project Document.

33. **Contract Interpretation**

All matters relating to the interpretation of this Contract or any Project Document, shall be referred to MCEC for determination. MCEC’s interpretation shall be final and unappealable.

34. **Notices**

All notices under this Contract or any Project Document shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to MCEC:

Maryland Clean Energy Center  
5000 College Avenue, Suite 31010  
College Park, MD 20740  
Attention: Executive Director

If to Vendor:


35. **Liquidated Damages**

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

Upon a determination by MCEC that Vendor 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 MCEC being required to present any evidence of the amount or character of actual damages sustained, Vendor agrees to pay liquidated damages to MCEC at the rates set
forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. Vendor expressly agrees that MCEC may withhold payment on any invoices as an offset against liquidated damages owed. Vendor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss MCEC is anticipated to incur as a result of each violation.

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): $156.00 per day until the monthly report is submitted as required.

(b) Failure to include in its agreements with MBE subVendors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): $78.00 per MBE subVendor.

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

(d) Failure to meet Vendor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

(e) Failure to promptly pay all undisputed amounts to a subVendor in full compliance with the prompt payment provisions of the Contract or the Project Documents for a Project: $585.00 per day until the undisputed amount due to the subVendor is paid.

35.2 Time is an essential element of the Contract and all Project Documents, and it is important that the work be vigorously prosecuted until completion.

(a) For each day that any work remains incomplete beyond the Milestones for a Project as specified in the Project Documents or the IDC, Vendor shall be liable for liquidated damages in the amount specified in the Project Documents for that Project. If the Project Documents for a Project do not provide for liquidated damages, then the liquidated damages for that Project under this section are $500.00 per day. An adjustment of the specified completion time(s) may be granted for approved change orders, or at the sole discretion of MCEC.

(b) MCEC will deduct and retain out of the monies due to or become due to Vendor hereunder the amount of liquidated damages, and in case the amounts due Vendor are less than the amount of such damages, Vendor shall be liable to MCEC for the difference.
35.3 Notwithstanding the assessment or availability of liquidated damages, MCEC reserves the right to terminate the Contract and any Project Document and exercise any and all other rights or remedies which may be available under the Contract, any Project Document, or otherwise may be available at law or in equity.

(If Vendor intends to rely on its Parent Company in some manner while performing on the MCEC Contract, the following clause should be included and completed for Vendor’s Parent Company to guarantee performance of Vendor. The guarantor/Vendor’s Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.)

36. Vendor Contractor Financial Information.

36.1 Vendor shall furnish to MCEC and any entity identified by MCEC as providing a source of funding for a Project (a) the most recent audited annual, financial statements of Vendor, prepared in accordance with generally accepted accounting principles in effect in the United States within 120 days after the end of its fiscal year, and (b) any other financial information of Vendor as may be reasonably requested by MCEC and or its lender(s) for any Project from time to time.

36.2 Vendor authorizes MCEC to provide Vendor’s financial information to any prospective providers of funding in connection with the financing or refinancing of any Project.

37. Miscellaneous

37.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

37.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

38. Parent Company Guarantee

38.1 (Corporate name of Vendor’s Parent Company) (“Guarantor”) hereby guarantees absolutely the full, prompt, and complete performance by Vendor of all the terms, conditions and obligations contained in this Contract, the RFQ, the IDC, and any Project Document, including any and all exhibits, submissions, or attachments that are now or may become incorporated in or attached to any of them, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract and any Project Document, including any and all financial commitments, obligations, and liabilities. Guarantor may not transfer this absolute guaranty to any other person or entity without the prior express written approval of MCEC, which approval MCEC may grant, withhold, or qualify in its
sole and absolute subjective discretion. Guarantor further agrees that if MCEC brings any claim, action, lawsuit or proceeding against Vendor, and Guarantor may be named as a party, in its capacity as absolute guarantor.

38.2 Guarantor shall furnish to MCEC and any entity identified by MCEC as providing a source of funding for a Project (a) the most recent audited annual, financial statements of Guarantor, prepared in accordance with generally accepted accounting principles in effect in the United States within 120 days after the end of its fiscal year, and (b) any other financial information of Guarantor as may be reasonably requested by MCEC and or its lender(s) for any Project from time to time.

38.3 Guarantor authorizes MCEC to provide Guarantor’s financial information to any prospective providers of funding in connection with the financing or refinancing of any Project.

(The following clause should be added to contracts for which there is a strong possibility of employment by current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”). The actual DHR Agreement must be included in the solicitation as Attachment O (see Section 1.43) Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

39. Hiring Agreement

39.1 Vendor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by Vendor and delivered to MCEC within ten (10) Business Days following receipt of notice that MCEC intends to move forward with a Phase II Contract. The Hiring Agreement will become effective concurrently with the award of the Phase II Contract.

39.2 The Hiring Agreement provides that Vendor and DHR will work cooperatively to promote hiring by Vendor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

40. Third-Party Beneficiary

MCEC is acting as the agent of MSU for the services and work being provided by Vendor under this Contract or any Project Document. Vendor acknowledges that MSU is a third-party beneficiary of this Contract and all Project Documents. MSU has the right to take direct action against Vendor if Vendor breaches any term of this Contract or any Project Documents, with or without an assignment of rights or obligations by MCEC to MSU. For all insurance required to be maintained by Vendor under the terms of this Contract, including the RFP and IDC, Vendor shall include MSU as a “loss payee” or “additional insured”, as the case may be, and shall obtain a written acknowledgement from its insurance company that MSU may make direct claims under the insurance policy.

41. Signatures
This Contract and any Project Document may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document. Signatures provided by facsimile or other electronic means, for example, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

IN WITNESS THEREOF, the parties have executed this Contract as of the date written above.

WITNESS/ATTEST: 

__________________________

BY: ________________________
Name: ______________________
Title: ______________________

WITNESS/ATTEST: 

__________________________

BY: ________________________
Name: ______________________
Title: ______________________

WITNESS: 

__________________________

MARYLAND CLEAN ENERGY CENTER: 

__________________________

BY: ________________________
Name: I. Katherine Magruder
Title: Executive Director
MASTER SERVICES AGREEMENT

Exhibit A

Request for Qualifications
MASTER SERVICES AGREEMENT

Exhibit B

Indefinite Delivery Contract I.D. No. EPC-IDC-8.0
MASTER SERVICES AGREEMENT

Exhibit C

MCEC Contract Affidavit
MASTER SERVICES AGREEMENT

Exhibit D

Vendor’s Qualifications Submittal
A.  AUTHORITY

I hereby affirm that I, ___________________________ (name of affiant) am the ________________________ 
(title) and duly authorized representative of ___________________________ (name of business entity) and that I 
possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B.  CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF 
ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

(1) Corporation - ☐ domestic or ☐ foreign;
(2) Limited Liability Company - ☐ domestic or ☐ foreign;
(3) Partnership - ☐ domestic or ☐ foreign;
(4) Statutory Trust - ☐ domestic or ☐ foreign;
(5) ☐ Sole Proprietorship.

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

Name and Department ID Number: ________________________
Address: ____________________________

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

Name and Department ID Number: ________________________
Address: ____________________________

C.  FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement 
Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, 
leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the 
business is to receive in the aggregate $100,000 or more shall, within 30 days of the time when the aggregate 
value of the contracts, leases, or other agreements reaches $100,000, file with the Secretary of State of Maryland 
certain specified information to include disclosure of beneficial ownership of the business.

D.  POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, 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 contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
   (i) Take appropriate personnel action against an employee, up to and including termination; or
   (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated ________, 201____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: __________________________

By: ___________________________ (print name of Authorized Representative and Affiant)

_______________________________ (signature of Authorized Representative and Affiant)
Attachment L – DHR Hiring Agreement  
(2017/10 DHS) 

Solicitation Number RFQ—MSU2020

Agency Contract/Solicitation Number: ______________________

MARYLAND DEPARTMENT OF HUMAN SERVICES
HIRING AGREEMENT

This Hiring Agreement ("Agreement") is effective this _____ day of ________________, _____ and is entered into by and between the Maryland Department of Human Services ("Department") and ____________________________ (the "Vendor") pursuant to State Finance Procurement Article, § 13-224, Annotated Code of Maryland, arising out of a Contract for services between Vendor and the Maryland Clean Energy Center ("Entity"), contract number ____________________________ ("Procurement Contract").

WITNESSETH:

WHEREAS, the Department has identified the Procurement Contract as eligible for execution of this Agreement; and,

WHEREAS, the Vendor and the Entity, have discussed and reviewed an inventory of job openings that exists or the Vendor is likely to fill during the term of the Procurement Contract in the State of Maryland; and

WHEREAS, the Vendor, Department and the Entity have discussed and reviewed the job descriptions, locations, and skill requirements for those positions; and

WHEREAS, the Department and the Entity have identified and discussed with the Vendor the workforce related benefits and support services available to the Vendor as a result of the Agreement including:

- Medicaid coverage for the employee and the employee's dependents for up to one year after placement in the job;

- Maryland Children's Health Program (MCHP) medical coverage for the employee's dependents after one year of employment for as long as eligibility is met;

- Food Supplement Program for the employee and the employee's dependents for as long as eligibility requirements are met;

- Child Care subsidies for the employee's dependents for up to one year after employment as long as eligibility requirements are met;
• Transportation subsidies for the employee for a period of time after employment;

• Other Retention services including counseling on an as needed basis; and

• Assistance with claiming tax credits for hiring the Department's current and former Family Investment Program ("FIP") recipients, their children, foster care youth, and child support obligors ("Candidates").

WHEREAS, the Vendor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Vendor and to promote the hiring of the Candidates by the Vendor.

NOW THEREFORE, upon valuable consideration received, the Vendor and the Department specifically agree as follows:

A. The VENDOR shall:

1. Notify the Department of all job openings that exist or result from the Procurement Contract.

2. Declare the Department the “first source” in identifying and hiring Candidates for those openings.

3. Work with the Department to develop training programs that will enable Candidates to qualify for and secure employment with the Vendor.

4. Give first preference and first consideration, to the extent permitted by law and any existing labor agreements, to Candidates the Department refers for job openings that exist or result from the Procurement Contract.

5. Agree to give Candidates referred to the Vendor by the Department priority in the filling of a job opening so long as the Candidate meets the qualifications of the position and the Department refers qualified Candidates within five (5) Business Days.

6. Submit biannual reports (for the duration of the Contract) listing the number of all job openings and the total number of individuals interviewed and hired under the Procurement Contract. The report shall also include information regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.

7. Designate the following individual to be the point of contact:

   Point of Contact Name:

   [Insert Name]

   Point of Contact Address:

   [Insert Address]
The point of contact will:

a. Provide additional information regarding "first source" jobs and clarify their requirements.
b. Receive Department referrals.
c. Provide feedback to a Department account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those Candidates hired by the Vendor.

8. Submit the Vendor's Federal Employment Identification Number ("FEIN") in an effort to increase efficiency in the employment monitoring process for annual legislative reporting.

B. The Department will designate an account representative who will:

1. Process all the Vendor's job notices in accordance with this "Agreement."

2. Refer screened and qualified Candidates to the Vendor's designated contact person.

3. Make referrals in a timely manner, that is, within five (5) Business Days after receiving the Vendor's job opening notices.

4. Assist in the development of any mutually agreed upon training, internship or apprenticeship programs that will better prepare Candidates for employment with the Vendor.

5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Supplement Program, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.

6. Ensure that the Vendor is advised of available subsidies and provide any assistance to the Vendor to obtain those subsidies.

7. Report the Vendor to the procurement Entity if the Vendor does not fulfill its responsibilities in accordance with this Agreement.

8. Review and evaluate the effectiveness of this undertaking with the Vendor and make modifications as necessary and appropriate.

C. DISCLAIMERS

Nothing in this Agreement shall cause the Vendor, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

D. NON-DISCRIMINATION
The Vendor agrees that there shall be no discrimination against any employee or Candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

E. MARYLAND LAW PREVAILS

The place of performance of this Agreement shall be the State of Maryland. This Agreement shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

F. EFFECTIVE DATE

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period ________________ through ________________, and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions. In addition, it is required that any executed extensions and additional funds added to an existing Hiring Agreement Contract be emailed to the Office of Hiring Agreements, Hiring.Agreements@Maryland.gov listing the new end date, updated contract amount and Agency Control/Solicitation Number.

IN WITNESS, WHEREOF, the Vendor and the Department have affixed their signatures below:

FOR THE VENDOR: FOR THE DEPARTMENT:

COMPANY NAME

FEIN: ____________________________

______________________________ SIGNATURE

______________________________ SIGNATURE

TITLE

___________________________ Hiring Agreements Program Manager

___________________________ TITLE

___________________________ DATE

___________________________ DATE
### CONTRACTOR PERFORMANCE EVALUATION

<table>
<thead>
<tr>
<th>FINAL REPORT</th>
<th>INTERIM REPORT</th>
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<tr>
<td>% COMPLETE</td>
<td>PHASE</td>
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**Facility:** 0  
**Project No:** 0  
**Date:** 01/00/00

**Description:**

**Contractor:** 0

### CONTRACT COST DATA

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<tr>
<td>Original Contract Amount</td>
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<td>Final Contract Amount</td>
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<tr>
<td>Punch List Completion Date</td>
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<tr>
<td>Final Payment Date</td>
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**MBE Goal:** 0%  
**MBE Commitment:** 0%  
**MBE Performance:** 0%

**Overall Rating:**

__ 4 = Outstanding ___ 3 = Above Average __ 2 = Satisfactory ___ 1 = Below Average ___ 0 = Unsatisfactory

**Remarks:** (Attach additional sheets or documentation if necessary)
### PERFORMANCE EVALUATION - CONSTRUCTION CONTRACT (Cont.)

<table>
<thead>
<tr>
<th>JOB DESCRIPTION</th>
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<tr>
<td>1 Compliance with Labor Standards</td>
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<td>2 Compliance with Safety Standards</td>
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<td>3 MBE Commitment</td>
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<td>4 Contract Management</td>
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<td>5 Schedule</td>
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<tr>
<td>6 Superintendence/Supervision</td>
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<tr>
<td>7 Coordination of Trades</td>
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<tr>
<td>8 Submittal Reviews by Contractor</td>
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<td>9 Submittal Timeliness</td>
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<td>10 Erosion Control Adherence</td>
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<td>11 Scheduling of Work by Trades</td>
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<tr>
<td>12 Mechanical Systems</td>
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<td>13 Electrical Systems</td>
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<td>14 Adherence to Plans/Specs</td>
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<td>15 Maintenance/Operation Manual</td>
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<td>16 O&amp;M Equipment Demonstrations</td>
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<td>17 Cooperation with Inspector</td>
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<td>18 As-Built Drawings</td>
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<td>19 Cooperation with Owner/User</td>
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<td>20 Change Orders by Owner/User</td>
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<td>21 Job Site Appearance/Clean-Up</td>
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<td>22 Status at Punch List Inspection</td>
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<td>23 Completion of Punch List</td>
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<td>24 Project Completion</td>
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<td>25 RFT's</td>
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**RATING CODE:**
- 4 = OUTSTANDING
- 3 = ABOVE AVERAGE
- 2 = SATISFACTORY
- 1 = BELOW AVERAGE
- 0 = UNSATISFACTORY

**(NOTE: ALL OUTSTANDING & UNSATISFACTORY RATINGS ARE TO BE EXPLAINED)**

### EVALUATION OF SUB-CONTRACTORS

<table>
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<tr>
<th>SUB-CONTRACTOR (Name &amp; Type)</th>
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RFP Template Version: 01/20/2017
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<td>Signature</td>
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<td>Date</td>
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</table>
Attachment N – Abbreviations and Definitions

For purposes of this RFQ, the following abbreviations or terms have the meanings indicated below:

Approved Equal - those supplies or services, or compatible items of construction whose quality, design, or performance characteristics are functionally equal or superior to an item specified.

Bidders - Energy services companies qualified to perform Energy Performance Contracts under the Maryland Department of General Services Indefinite Delivery Contract I.D. No. EPC-IDC-8.0.

Business Day(s) – The official working days of the week to include Monday through Friday. Official working days exclude MCEC Holidays (see definition of “Normal MCEC Business Hours” below).

Certified Energy Manager – A certification from the Association of Energy Engineers (AEE).

Change Order - a written order signed by the responsible Procurement Officer, directing a Vendor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Vendor.

Code - the Annotated Code of Maryland.

COMAR – Code of Maryland Regulations available on-line at www.dsd.state.md.us.

Consulting engineer - MCEC’s designated representative for design and engineering oversight.

Contract - the Master Services Agreement executed between MCEC and the Vendor as a result of this RFQ.

Vendor - The selected Vendor that is awarded a Master Services Agreement by MCEC.

Contract Documents - this RFQ, the Qualifications Submittal and all amendments /addenda thereto, the Master Services Agreement, any contract or Task Order entered into or issued in connection with the RFQ or Master Services Agreement, any Vendor Phase I Proposal, plans and specifications and construction drawings developed by the Vendor, other documents that may be referenced in the RFQ or written contract, and the written contract, contract forms and bonds, notice to proceed, and any supplemental agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof.

Contract Monitor (CM) – MCEC representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more MCEC representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities.

Contract Price - the amount payable to the Vendor under the terms of any of the Contract Documents.
Contract Time - the number of calendar days shown in the Contract Documents indicating the time allowed for the completion of the work contemplated in the contract.

Cost Avoidance - the difference between current and baseline cost, (baseline cost being what current cost would have been had no energy efficiency measures been implemented). Baseline cost also reflects variation in weather severity, occupancy, equipment loads, operating patterns, and energy rates.

Critical Path Method (CPM) - a scheduling/management tool showing a network of work elements or activities for a construction project.

Day - calendar day unless otherwise designated.

ECM - Energy Conservation Measures.

eMM - eMaryland Marketplace

Employee - all employees of MCEC, MSU, or the State of Maryland, whether classified, unclassified, or employed under a personal services contract of employment. It does not include independent Vendors or successful Vendors.

Energy - electricity, natural gas, propane, fuel, chilled water, steam and water, purchased or generated on-site.


VENDOR - Energy Service Company.

Financial Qualifications Submittal – the Vendor’s Financial Qualifications Submittal pursuant to this RFQ.

Go-Live Date – The date, as specified in the Notice to Proceed, when the Vendor must begin providing all services required by this solicitation.

Key Personnel – All personnel identified in the solicitation as such, or personnel identified by the Vendor in its Qualifications Submittal that are essential to the work being performed under the Contract.

Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.

MCEC - the Maryland Clean Energy Center, a body politic and corporate and a public instrumentality of the State of Maryland.

MCEC’s Approval - it is approved in writing by MCEC.

Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
Normal MCEC Business Hours - Normal MCEC’s business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except holidays of MCEC.

Notice to Proceed - A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the GoLive Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation.

Operations Costs - costs of personnel labor, maintenance materials and contract services, directly associated with operating and maintaining building lighting, HVAC and other energy consuming systems.

Payback Period - the amount of time, in years, that MCEC will need to pay for the cost of the project, including all planning, engineering, design, construction, start-up, training, on-going maintenance, and interest for the length of the loan period.

Payment Bond - the security in the form approved by MCEC and executed by the Vendor and its surety, subject to Title 17 of the State Finance and Procurement Article.

PDF - portable data files

Performance Bond - the security in the form approved by MCEC and executed by the Vendor and the surety, guaranteeing complete performance of the Contract.

Phase I Contract - the written agreement executed between MCEC and the Vendor, to conduct the work included in Phase 1, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Vendor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which MCEC is obligated to compensate them, therefore at the mutually established and accepted rate or price.

Phase II Contract - the written agreement executed between MCEC and the Vendor, to conduct the work included in Phase II, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Vendor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the MCEC is obligated to compensate them, therefore at the mutually established and accepted rate or price. Phase II’s contract includes Phase II and Phase III’s scope of work.

Phase II Qualifications Submittal - The Qualifications Submittal completed during Phase I for the work to be accomplished during Phase II and III, includes as appropriate either or both of an Vendor’s Technical or Financial Qualifications Submittal.

Project Phases - MCEC EPC projects are divided into the following Phases:

Plans and Specifications - the official construction drawings and specifications developed by the Vendor and approved by MCEC.

Procurement Officer – Prior to the award of any Contract, the sole point of contact in MCEC for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract, and is the only MCEC representative who can authorize changes to
the Contract. The Department may change the Procurement Officer at any time by written notice to the Vendor.

Qualifications Submittal – As appropriate, either or both of an Vendor’s Technical or Financial Qualifications Submittal in response to this IDC.

Repair - to restore after injury, deterioration, or wear, to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth, in compliance with contract or warranty, and fully serviceable; and upon completion of such repair, unless otherwise stated to be in such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish to be applied without extra cost to MCEC. When the word “repair” is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for normal use for which it was intended originally.

RFQ - This Request for Qualifications MSU2020 issued by MCEC, including any addenda.

Subcontractor - only those having a direct contract with the Vendor. It includes one who furnishes material worked to a special design according to the plans and specifications for the “Work.” It excludes one who merely finishes material not so worked. It also includes those supplying architectural, engineering, or other design services to the Vendor.

Substantial Completion - is the date on which the project can be occupied and used for its intended purpose.

Task Order— the written order issued by MCEC for a specific project at MSU under the Contract.

Technical Qualifications Submittal – the Vendor’s Technical Qualifications Submittal pursuant to this RFQ.

Total Qualifications Submittal Price - The Vendor’s total proposed price for services in response to this solicitation, included in the Financial Qualifications Submittal with Attachment F – Price Form, and used in the financial evaluation of Qualifications Submittals.

Surety - the corporate body bound as required by law for the full and complete performance of the contract by the Vendor or for the payment by the Vendor to subVendors and suppliers.

Vendor - the entity to whom a contract is awarded as a result of this RFQ.

Veteran-owned Small Business Enterprise (VSBE) – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

Work - the furnishing of all labor, materials, equipment, services, utilities, architectural/engineering and other design services, financing, cost savings guarantee, maintenance, training, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Vendor by the Contract.
Written Notice - notice in writing if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or delivered by registered mail, or other means permitted by law, including email, to the last business address. For purposes of written notice required to be delivered or served on MCEC, its employee(s) or officer(s), delivery by electronic means, including email and facsimile, shall not be considered “written notice.”