



Design/Build – Elevator Modernization at Boyd J. Michael, III Technical High School

RFP 2026-34

Procurement Schedule

Issue Date:	November 19, 2025
Pre-Proposal Meeting:	November 26, 2025 @ 9:00 AM Boyd J. Michael, III Technical High School 50 W. Oak Ridge Drive Hagerstown MD 21740
<i>(Upon completion of the Pre-Proposal Meeting for RFP 2026-34, Bidders/Staff will head to North Hagerstown High School for the Pre-Proposal Meeting for RFP 2026-33 Design/Build – Elevator Modernization at North Hagerstown High School, which is tentatively scheduled to begin at 10:00 a.m.)</i>	
There are no students at the facility on 11/26. Pre-Proposal Meeting attendance is not required to provide a Bid. Contractors can contact WCPS to request additional times to see the facility prior to the bid due date, however it may be coordinated before or after school day hours.	
Deadline for Written Questions Submission:	December 4, 2025 by 12:00 PM
Proposal Due:	December 18, 2025 by 11:30 AM 10435 Downsville Pike Hagerstown, MD 21740
Tentative Award Date:	January 2025

Dates and/or times are subject to change by the issuance of written addenda.

WCPS Contract Managers

Procurement Officer
Scott Bachtell
Supervisor of Purchasing
301-766-2842
bachtsco@wcps.k12.md.us

Contract Administrator
Chad Criswell
Sr. Project Manager and Planning Supervisor
301-766-8601
criswcha@wcps.k12.md.us

This Bid/RFP document is posted on the WCPS Purchasing website at www.wcpspurchasing.com. This is also the source for any/all addenda. Please register your company for notices about this Bid/RFP and similar projects on our website.

INVITATION TO BID

November 19, 2025

RFP: 2026-34, Design/Build Elevator Modernization at Boyd J. Michael Technical High School

Pre-Proposal Meeting: November 26, 2025 @ 9:00 AM Eastern Time
Boyd J. Michael, III Technical High School
50 W. Oak Ridge Drive
Hagerstown, MD 21740

(Upon completion of the Pre-Proposal Meeting for RFP 2026-34, Bidders/Staff will head to North Hagerstown High School for the Pre-Proposal Meeting for RFP 2026-33 Design/Build – Elevator Modernization at North Hagerstown High School, which is tentatively scheduled to begin at 10:00 a.m.)

There are no students at the facility on 11/26. Pre-Proposal Meeting attendance is not required to provide a Bid. Contractors can contact WCPS to request additional times to see the facility prior to the bid due date, however it may be coordinated before or after school day hours.

RFP Inquiries to: Mr. Scott Bachtell
Supervisor of Purchasing (WCPS)
Email: bachtsco@wcps.k12.md.us
Please copy Chad Criswell at criswcha@wcps.k12.md.us

Proposal Opening: Washington County Public Schools Center for Education Services
Purchasing Department at 10435 Downsville Pike, Hagerstown, MD 21740

Proposals shall be submitted, along with additional documentation required per the RFP (request for proposal) Solicitation instructions, in a Sealed Envelope showing RFP Name and Due Date on the outside of the envelope. Faxed or Emailed proposals will not be accepted. Proposals delivered in person should be brought to the visitor entrance of the Washington County Public Schools Center for Educational Services. The vendor shall inform the receptionist that it is there to submit a bid. The receptionist will inform the Purchasing Department, and a staff member will meet you in the lobby to receive the bid submission. The staff member will time and date-stamp the submission and provide the vendor with a receipt.

Proposals not received prior to the day/time designated for the proposal opening, or proposals not submitted to the Purchasing Staff, may not be properly filed. Such proposals, upon discovery by the Purchasing Official, will be refused and/or returned unopened to the Bidder. During the summer months, the Purchasing Department is open **Monday through Thursday**, 7:00 am – 12:00 pm and 1:00 pm – 4:00 pm local time, except national and school holidays.

The final award recommendation, including the bid tabulation, will be posted on the WCPS Purchasing webpage, after Board of Education of Washington County approval.

Address Mail or Delivery Package to:
Attention Scott Bachtell, Supervisor of Purchasing

Telephone: (301) 766-2842

TO VIEW CURRENT SOLICITATIONS, PLEASE SEE THIS WEB ADDRESS:

<http://wcpspurchasing.com/bids/opportunities>

FOR BID RESULTS, PLEASE SEE THIS WEB ADDRESS:

<http://wcpspurchasing.com/bids/results>

RFP Solicitation Document includes the following:

- | | |
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| √ Instructions to Bidders (AIA A701) | √ General Conditions (AIA A201) |
| √ Technical Specifications | √ Bid/Proposal Affidavit, Contract Affidavit |
| √ Contract/Terms & Conditions (AIA A101) | √ Minority Business Enterprise Procedures |
| √ Proposal Form (included in Technical Specifications) | √ Additional Contract Document Attachments |
| √ Maryland Prevailing Wage Rates | |

NOTICE

Notice is hereby given that Washington County Public Schools will accept sealed proposals for the purpose of establishing a contract for a Design/Build Elevator Modernization at Boyd J. Michael, III Technical High School. The Contract /RFP Solicitation Documents were prepared by Washington County Public Schools (the Owner). Below is a summary of the project:

The successful Bidders shall furnish all engineering, permits, labor, materials, equipment, and services necessary for, and incidental to, performing the work specified in the enclosed Technical Specifications for the construction project 2026-34, Design/Build Elevator Modernization at Boyd J. Michael, III Technical High School. The construction contract will be awarded to the lowest responsible bidder with consideration given to the Technical Proposal, quantities involved; time required for delivery; the purpose for which required; the competency and responsibility of the bidder; the ability of the bidder to perform satisfactory service; and the plan for utilization of minority contractors. The Washington County Board of Education ("WCBOE") may reject any and all proposals and re-advertise for other proposals.

CONTRACT DOCUMENTS

Technical drawings and specifications provided by WCPS for the purposes of this solicitation remain the sole property of WCPS. This information is provided for bidding and construction purposes and should not be posted publicly (physically or electronically) or shared with any other business, subcontractor, or individual not involved with the solicitation and subsequent construction that results from the drawings.

FOR ACCESS TO EXISTING FACILITY DRAWINGS

Please send an email with the subject line, "2026-34 Technical Drawing Request" to the following people:

- Scott Bachtell – BachtSco@wcps.k12.md.us
- Michelle Schultz – SchulMic@wcps.k12.md.us
- Chad Criswell – Criswcha@wcps.k12.md.us

PROPOSALS DUE

Sealed proposals will be received at the Washington County Public Schools Center for Education Services, Purchasing Department at 10435 Downsville Pike, Hagerstown, Maryland.

Proposals will be opened and read aloud at that time. Proposals received after that time will not be accepted and will be returned unopened. Interested parties are invited to attend.

No bidder may withdraw their bid for a minimum period of ninety (90) calendar days after the day of the proposal opening.

PROPOSAL SOLICITATION AVAILABILITY

Contractors may obtain the files that comprise the Proposal Solicitation Document from the Purchasing Website on the following basis:

1. The solicitation document is available for viewing and download from the WCPS Purchasing Web site: www.wcpspurchasing.com. The proposal solicitation document is made available to any person or company who chooses to obtain it from the website. **To submit a proposal, prequalification is a requirement.** All contractors who have obtained a copy of the document from the website or by other means may not be eligible to be awarded. **Only the WCPS Purchasing Department can grant pre-qualification approval. Only pre-qualified contractors are eligible to be awarded this project.** Registration via the WCPS website is mandatory and is a two-step process. Approval at step one only of the application is not sufficient for bidding construction work. WCPS Purchasing Department will notify each contractor in writing upon approval of the pre-qualification application.
2. To check whether or not your company is pre-qualified, you may contact the Purchasing Department by calling Beverly Bergan at 301-766-2841, or by email to: bergabev@wcps.k12.md.us. The Proposal Solicitation consists of electronic files which provide instructions, technical specifications, drawings, and supplemental addenda issued prior to the proposal opening.
3. The Bidder assumes all responsibility for downloading all electronic files and for coordinating any pertinent information contained in the RFP Documents. Downloading/viewing only specific files or partial information will not relieve the contractor or subcontractor from the Work indicated on other drawings or specifications comprising the complete proposal solicitation.
4. Proposals received from contractors who have not been pre-qualified seven days prior to the proposal opening date may be refused or returned unopened to them. To become pre-qualified, complete the Prequalification Questionnaire available by contacting the Purchasing Department or by visiting our website, <http://wcpspurchasing.com/vendors-contractors/becoming-wcps-vendor>.

5. Contractors and subcontract bidders must be licensed to perform construction work in the State of Maryland in order to be eligible to bid. Contractors must meet WCPS' eligibility requirements in order to bid this project as a prime bidder.
6. eMaryland Marketplace Advantage (eMMA) Registration – All Washington County Public Schools (WCPS) suppliers and/or contractors interested in bidding on WCPS projects must register on eMaryland Marketplace Advantage (<https://emma.maryland.gov/>) **PRIOR** to submitting a bid. Maryland law requires local and state agencies to post solicitation and award notices on eMaryland Marketplace Advantage. This cannot be done without the contractor's self-registration in the system. Registration is free. Failure to comply with this requirement may be considered grounds for default. It is recommended that any interested bidder register with eMaryland Marketplace Advantage regardless of the award outcome for this procurement as it is a valuable resource for bid notification for municipalities throughout Maryland.

MINORITY BUSINESS ENTERPRISE (MBE)

This bid /project is subject to Minority Business Enterprise Procedures for Aging School Program Funded Public School Construction Projects. Certified Minority Business Enterprises are encouraged to respond to this solicitation notice. All contractors, including certified MBE firms, when submitting bids as general or prime contractors, are required to attempt to achieve the MBE subcontract participation goals and sub goals established for this construction project from MDOT certified MBE firms. Please visit the WCPS Purchasing Department website for a list of MDOT certified MBE firms that may be potential subcontractors.

The overall certified MBE subcontracting goal for this project is 2%. No sub goals. Refer to MBE attachments for detailed MBE procedures and MBE forms.

The bidder is required to submit with its bid a completed Attachment A – Certified MBE Utilization and Fair Solicitation Affidavit and Attachment B – MBE Participation Schedule, as described in the MBE Procedures included in the bid solicitation documents.

Notice to Bidders: In accordance with COMAR, a new MBE liquidated damages provision has been added to the AIA Document A101 – 2007 Standard Form of Agreement Between Owner and Contractor, as amended by Washington County Board of Education (Article 8.7 in Specification Section 00 52 13).

Notice to Bidders: Please review the MBE Supplemental Information immediately preceding Attachment "A" in Section 00 43 39. Bidders who wish to review GOSBA official documentation regarding the "New 60% Rule" can access it here: <http://wcpspurchasing.com/document/1382/mbe-new-60-rule>

OBJECTION TO AWARD

Any company objecting to the RFP procedure or the recommendation for award has five (5) business days following the date of award by the Board of Education to file a written protest with the Superintendent of Schools. It is the company's responsibility to ascertain and confirm the date/time of the pertinent Board Meeting. The written appeal must be submitted on company letterhead, dated and signed by the senior officer in the company. The protest letter must

include a request for review and ruling by WCPS, a detailed statement of the legal and factual grounds for the protest, including the resulting prejudice to the company, copies of relevant documents, and a statement of the form of relief being requested. Failure to comply with these instructions may result in the protest being deemed “not filed.” Proposal protests received later than five (5) days after the Board Meeting will result in the protest being deemed “not timely.” **WCPS will not respond or address proposal protests that do not conform to these instructions.**

BIDDING REQUIREMENTS

Bid Security Bond in the amount of 5% of the Total Bid is required from all Bidders. The Bid Security Bond serves as security for obtaining Performance Bond and Payment Bonds in 100% of the Contract amount from the successful bidder within ten (10) days from *Notice of Award* of the Contract. Bidder must use the AIA bond form versions provided herein. Only AIA forms that have been reviewed for acceptance by WCPS legal counsel will be acceptable. The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the Work, and prospective Bidders may be required to furnish evidence of performance of similar projects of similar magnitude and complexity and all such information and data as requested. The Owner reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligation of the Contract and to complete the Work contemplated therein. The Owner reserves the right to reject any or all proposals, to waive irregularities in the proposals, select alternates in any order and to make the award in the manner that the WCBOE determines will best serve the interests of WCPS.

By order of: Washington County Public Schools
Scott Bachtell, Supervisor of Purchasing

TECHNICAL SPECIFICATION

Design/Build – Elevator Modernization at Boyd J. Michael, III Technical High SchoolRFP 2026-34Table of Contents

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ATTACHMENTS – Additional Contract Document Attachments

Standard Form of Proposal

Bid/Proposal Affidavit

AIA A701-2018 Instruction to Bidders as amended by Washington County Board of Education

Prevailing Wage Rates

Minority Business Enterprise (MBE) Procedures - Attachment A and Attachment B

AIA A310-2010 Bid Bond Form

AIA A101-2017 Standard Form of Agreement between Owner & Contractor, as Amended by Washington County Board of Education

Contract Affidavit

AIA A312-2010 Performance Bond

AIA A312-2010 Payment Bond

AIA G702 and G703 – 1992 Payment Application

AIA G704 – 2000 Certificate of Substantial Completion

AIA A201 – 2017 General Conditions of the Contract for Construction as Amended by Washington County Board of Education

Change Order Proposal Form

SECTION I - GENERAL TERMS AND CONDITIONS

1. Introduction

It is the intent of the Owner to solicit sealed proposals from bidders to establish a contract for the design, provision, and installation of a modernization of the existing elevator at Boyd J. Michael, III Technical High School. The awarded contractor will provide the engineering, equipment, labor, services, and permits required to satisfactorily complete the elevator modernization as noted in the bid documents. Due to the unique nature of, and multiple disciplines required for project completion, this RFP is being advertised to both Elevator Companies, and General Contractors for consideration. This project is made possible via funding from the local Capital Improvement Program (CIP) and the Board of Education of Washington County (Owner, WCBOE or WCPS), and the Aging School Program (ASP) as made available by the Interagency Committee on School Construction (IAC).

2. Definitions

As contained herein, the terms. "Owner", "WCPS" and "Washington County Public Schools" mean Board of Education of Washington County. The terms "bidder", "offeror", "firm", and "person" are synonymous, and mean an entity submitting a proposal in response to this solicitation. Similarly, the terms "bid", and "proposal", mean the response submitted by an offeror. The term "contractor" means an offeror awarded a contract as a result of this solicitation. The terms "General and Special Provisions", "requirements", "scope", "specifications", and "criteria" mean the services, terms, and conditions required by the RFP.

This RFP, and associated Contract Documents includes multiple AIA documents. Any reference in the following AIA Documents (A701, A310, A101,A312, G702, G703,G704, and the A201) to "Architect, or "Design Professional" (where not specifically identified differently in these Technical Specifications), shall be interpreted as the Owner.

Where there is a discrepancy between Definitions or Scope of Work in the Technical Specifications and the following AIA Documents (A701, A310, A101,A312, G702, G703,G704, and the A201) the Technical Specifications will take precedence.

3. Bidder Registration

Vendors are solely responsible for completing the vendor registration process online at wcpspurchasing.com. Contact Beverly Bergan, Purchasing Associate, at 301-766-2840, or by email to: bergabev@wcps.k12.md.us if you have any questions or to check the status of your registration. Once registered in the WCPS Vendor Database, you will be able to view current solicitations and may automatically receive notification of certain bid solicitations. Washington County Public Schools will not be held responsible for a company's failure to become and remain a registered Vendor, to identify appropriate commodity/service categories, to keep the self-service vendor account up to date with current contact information, and to accomplish these things in a timely manner. Bidders with a repeated history of not bidding in a specific category may be removed from the Vendor Database for that category at the discretion of the Purchasing Supervisor.

- a. If your firm is already a WCPS registered vendor: You must confirm your account is current and a W-9 must be on file.

4. eMaryland Marketplace Advantage (eMMA) Registration

All Washington County Public School (WCPS) suppliers and or contractors interested in bidding on WCPS projects must register on eMaryland Marketplace Advantage (<https://emma.maryland.gov/>) prior to submitting a proposal/bid.

Contractors are required to register with eMaryland Marketplace Advantage (<https://emma.maryland.gov/>). Maryland law requires local and state agencies to post solicitation and award notices on eMaryland Marketplace Advantage. This cannot be done without the contractor's self-registration in the system. Registration is free. Failure to comply with this requirement may be considered grounds for default. It is recommended that any interested bidder register with eMaryland Marketplace Advantage, regardless of the award outcome for this procurement, as it is a valuable resource for bid notification for municipalities throughout Maryland.

5. **Receipt of Bids**

- a. A single hard copy of complete proposals (technical proposal, bid form, bid/proposal affidavit) shall be submitted prior to the deadline stated on the cover page of this RFP. Proposals received after the due date and time listed will not be considered. Any proposal may be withdrawn before the scheduled time for opening. Hard copy proposals must be hand delivered to the Owner, and a receipt must be received from the Owner before the due date and time. Bids received prior to the time of opening will be time-stamped and securely kept unopened.
- b. All inner and outer envelopes and packaging, used by Fed Ex, UPS and etc., are to be labeled with the following:
 - i. Bidder Name
 - ii. Bid Number and Name
 - iii. Due Date and Time
- c. In the event of inclement weather on the date when bids are scheduled to be opened and the WCPS offices are closed, or operating under a modified schedule, bids will be opened on the next business day at the same time as previously scheduled. Bids will be accepted until the scheduled time of opening on the next business day. Often when schools are closed due to inclement weather, administrative offices remain open. When in doubt, call the Purchasing Department (301-766-2840).

6. **Addenda**

- a. All changes to the bid solicitation will be made through appropriate addenda issued from the Owner.
- b. Addenda will be available on the WCPS Purchasing Department webpage.
- c. Addenda will be issued no later than four (4) days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.
- d. Each bidder shall ascertain, prior to submitting a bid, that they have received all Addenda issued and the bidder shall acknowledge receipt on the Proposal Form. Failure of any bidder to acknowledge the receipt of addenda will not relieve that bidder from any obligations under this solicitation as amended by addenda. All addenda so issued will become part of the award and contract documents.

7. **Preparation of Bid**

- a. Should any bidder be in doubt as to the meaning of the specifications, or should they find any discrepancy or omission, they shall notify the Contract Managers listed on the solicitation cover sheet in writing. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligations to comply in every detail with all the provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful bidder. If

required, bidders will be notified of clarifications and/or additional information by means of addenda.

- b. Each bid will show the full business address and contact information of the bidder and be signed by the person(s) legally authorized to sign contracts. All correspondence concerning the bid and contract, including notice of award, copy of contract, and purchase order, will be emailed, or mailed, to the address shown on the bid in the absence of written instructions from the bidder to the contrary.
- c. Bidder shall submit one original proposal, with the requested documents signed. Bidders may not submit more than one proposal. Bids must be prepared on the proposal form(s) provided. **WCPS's Price Proposal and other forms shall not be altered.**
- d. Compliance with Laws; The Contractor hereby represents and warrants that:
 - i. It is qualified to do business in the State of Maryland and that it will take such action as, from time-to-time hereafter, may be necessary to remain so qualified;
 - ii. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
 - iii. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
 - iv. 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
 - v. **Bidder shall provide proof of compliance to WCPS upon request.**
- e. By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.
- f. Bids by partnerships must be signed with the partnership name, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- g. Bids by corporations must be signed with the name of the corporation, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- h. Failure to sign the bid document will result in rejection of the bid as non-responsive.
- i. WCPS will not be responsible for any costs incurred by a bidder in preparing and submitting a proposal in response to this solicitation.

8. Bid Opening

- a. Bids shall be opened in public at the time and place designated in the bid solicitation.
- b. Complete evaluation of the proposals will not take place at the bid opening and no indication of award will be made. A final recommendation(s) shall be prepared for review and approval by the Board of Education of Washington County.

- c. Final award recommendation, and the bid tabulation, will be posted on the WCPS webpage, after the Board of Education of Washington County approval.

9. Errors in Bid Submissions

- a. Bidders, or their authorized representatives, are expected to fully inform themselves as to the conditions and requirements of the specifications before submitting bids. Failure to do so will be at the bidder's own risk. The Bidder shall have no right to any damages, cost and/or any other remedy at law or equity against WCPS for any miscalculation, misunderstanding, error (either omission or commission), mistake, misinterpretation, and/or the failure by the Bidder to obtain an award of bid, award of contract and/or profits, fees or money from WCPS when the Bidder failed to fully inform itself.
- b. If the bidder has made an error, the bidder may request, in writing, to have their bid withdrawn. Approval of a bidder's request is not automatic and may be given only by the Supervisor of Purchasing. Requests for withdrawal are usually denied, unless the bidder proves to the satisfaction of the Supervisor of Purchasing that the mistake was either a scrivener's error or another type of clearly unintentional error so departing from customary and reasonable business practices as to be obvious and to legitimately and substantially impair the vendor's business.
- c. Neither law nor regulations make allowance for errors either of omission or commission on the part of the bidders. In case of error in multiplication of unit price when arriving at total price per line item, the unit price shall govern. If there is a discrepancy between the price written in numbers and the price written in words, the words will govern.

10. Award or Rejection of Bids

- a. The basis of award shall be the bidder submitting a responsive bid that conforms to the specifications established in the solicitation with consideration given to the quantities and types of materials involved, adherence to schedule requirements, purpose for which required, competency and responsibility of bidder, and the ability of the bidder to perform satisfactory service, if applicable.
- b. The Owner reserves the right to cancel this RFP, to determine completeness and/or timeliness of bids, to reject any or all bids in whole or in part, to make partial awards, to waive any informality in any quotation, to increase or decrease quantities if quantities are listed in the bid, to reject any bid that shows any omissions, alterations of form, additions not called for, conditions, exclusions, or alternate proposals, to conduct discussions with any or all qualified or potentially qualified Bidders in any manner necessary to serve the best interests of the Owner, and to make any such award as is deemed to be in its best interest.
- c. Bidders may be required, before the awarding of a contract, to show to the complete satisfaction of the Owner, that they have the necessary facilities, ability, and financial resources to execute the contract in a satisfactory manner, and within the time specified. Bidders may be required to demonstrate they have the necessary experience, history, and references to assure the Owner of their qualifications.
- d. The Board of Education of Washington County reserves the right to award the bid within 90 days from the date of the bid opening unless a different time period is stated in the bid document.
- e. Unless stated otherwise in Section II, the contract may be awarded by line item, group, or in the aggregate, whichever is in the best interest of WCPS.

- f. In the event of a tie, where all other factors, such as past performance, are considered comparable, the award shall be made to the Washington County based bidder; the closest Maryland out-of-county based bidder; and the closest out-of-state based bidder, in that order of preference.
- g. WCPS does not have local, state or federal preference requirements except when mandated by a targeted funding source.
- h. If, after competitive bids have been opened, the Supervisor of Purchasing determines that only one responsible bidder has submitted a responsive bid, the procurement contract may be negotiated with that one bidder as sole source procurement or the procurement may be re-bid, whichever is deemed to be in the best interests of the Owner.
- i. A recommendation for the award of a contract will be presented to the Board of Education of Washington County for approval. Upon approval of the award of contract, the bidder(s) shall be notified of their award(s). The signed bid documents, contents of this RFP, and the resulting purchase order will constitute the contract. By submitting a bid, the bidder agrees to the Terms and Conditions listed in this RFP.
- j. The Owner reserves the right to reject the bid of a bidder who has, in the opinion of the Owner, failed to properly perform under previous contracts, or, who investigation shows, is not able to perform the contract.
- k. The Board of Education of Washington County retains the right to:
 - i. Reject any and all bids, if it is deemed in the best interest of WCPS to do so.
 - ii. Request revised or best and final pricing from all qualified bidders.
 - iii. Reject bids for one or more of the following reasons:
 1. Failure of the bidder(s) to provide the requested information.
 2. Failure of the bidder(s) to respond to any question, request for information, clarification, presentation, or interview.
 3. Failure of the bidder(s) to follow the prescribed instructions for proposal preparation, submission, and response format.
 4. Collusion or the appearance of collusion, among or between firms.
 5. Lack of responsibility on the part of the bidder, as determined by the Contract Manager.
 6. Submission of a proposal, in whole or in part, that does not meet bid specifications as outlined herein.
 7. Evidence submitted by, or investigation of, bidder fails to satisfy WCPS that the bidder is sufficiently experienced and qualified to carry out the obligations of the contract contemplated herein.
 8. Other irregularities or inconsistencies within a proposal deemed significant deviations or issues by the Contract Manager.
- l. If, during the life of the contract, a product or service does not meet the solicitation terms and conditions, the Owner retains the right to cancel the awarded item(s) and award to a new bidder, as long as that bidder mutually agrees to the award.

11. Billing and Payment

- a. The Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work.

- b. At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values.
- c. Retainage in the amount of five (5%) percent shall be withheld with each application for payment until Final Completion.
- d. Schedule of Values shall be submitted on AIA G702 and a sample form is attached to this RFP. The contractor may substitute a similar document with preapproval from the Owner.
- e. WCPS standard payment terms are Net 30 days.

12. Contract Assignment

- a. The awarded vendor(s) will not assign or transfer any portion of their interest or obligation under this Agreement to any third party, without the prior written consent of the Owner. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, elected official of the Owner, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.
- b. The awarded vendor(s) will submit to the Owner, in writing, the name of each subcontractor they intend to employ, the portion of the material to be furnished, their place of business, and any such information as may be required in order to know whether such subcontractor is reputable and reliable and able to furnish satisfactorily the material as called for in the specifications. **This information is required in the Proposal, and will become part of the Contract Documents to the awarded vendor.**
- c. The Owner reserves the right to approve or disapprove ALL proposed changes to subcontractors once an initial subcontractor has been submitted via the Proposal/ approved via Award of Contract. Any increased cost associated with the change of a subcontractor shall be the full obligation and responsibility of the awarded vendor(s).
- d. The vendors shall submit to the Owner, in writing, the manufacturer of the elevator equipment . **This information is required in the Proposal, and will become part of the Contract Documents to the awarded vendor.**
- e. The Owner reserves the right to approve or disapprove ALL proposed changes to elevator equipment manufacturers once the proposal has been submitted or approved via Award of Contract. Any increased cost associated with the change of manufacturer shall be the full obligation and responsibility of the awarded vendor(s).
- f. The awarded vendor(s) will not legally, or equitably, assign any of the funds payable under the contract, or its claim thereto, unless by, and with, the consent of the Owner.
- g. The awarded vendor(s) will have the same provisions inserted in all subcontracts relative to the terms of this RFP and other contract documents. Nothing contained in this contract shall create any contractual relations between any subcontractor and the Owner.

13. Subsidiaries

If a Bidder that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Bidder such as, but not limited to, proposed services, description of

the Bidder's ability to perform the scope of work, references and financial reports, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

14. Hold Harmless

It is understood that the awarded vendor(s) shall defend and hold harmless the Board of Education of Washington County and its representatives, from all suits, actions, or claims of any kind brought about as a result of any injuries or damages sustained by person(s) or property during the performance of this contract.

15. Termination for Default

- a. When an awarded vendor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the Owner. The Owner may, by written notice of default to the vendor, terminate the whole or any part of the contract in any of the following circumstances:
 - i. If the vendor fails to perform the services or provide the products within the time and manner specific herein or any extension thereof, or:
 - ii. If the vendor fails to perform any of the provisions of this contract, or fails to make progress as to endanger performance of this contract, in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten calendar days (or longer as authorized by the Supervisor of Purchasing) after receipt of written notice from the Supervisor of Purchasing of such failure, or:
 - iii. If the vendor willfully attempts to perform the services other than specified as to coverage, limits, protections, and quality or otherwise, without specified authorization in the form of contract amendment, or:
 - iv. If a determination is made by the Owner that the obtaining of the contract was influenced by an employee of the Owner having received a gratuity, or a promise therefore, in any way or form.
- b. In the event the Owner terminates the contract in whole or in part, the Owner may procure such products and services, in a manner the Supervisor of Purchasing deems appropriate, and the vendor shall be liable to the Owner for any additional cost(s) incurred.
- c. If, after notice of termination of this contract under provisions of this clause, it is determined for any reason that the vendor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

16. Termination for Convenience

The contract may be terminated by the Owner in accordance with this clause in whole, or in part, whenever the Owner determines that such a termination is in the best interest of the Owner. Written notice shall be given a minimum of 60 days in advance. The Owner will pay for all services, in accordance with contract pricing, up to the date of the termination. However, the awarded vendor(s) shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Under this contract, the awarded vendor does not have a right to unilateral termination for convenience.

17. Governing Law and Venue

The solicitation shall be construed in accordance with, and interpreted under, the laws of the State of Maryland. Any lawsuits shall be filed in the appropriate State Court located in Washington County, Maryland.

18. Minority and Small Business Enterprises Requirements

This bid /project is subject to Minority Business Enterprise Procedures for State Funded Public School Construction Projects and the Aging Schools Program. Certified Minority Business Enterprises are encouraged to respond to this solicitation notice.

All contractors, including certified MBE firms, when submitting bids as general or prime contractors, are required to attempt to achieve the MBE subcontract participation goals and subgoals established for this construction project from MDOT certified MBE firms. Please visit the MD DOT Office of Minority Business Enterprise website: <https://marylandmdbe.mdbecert.com/> for a list of MDOT certified MBE firms that may be potential subcontractors.

The overall certified MBE subcontracting goal for this project is 2 % with 0% subgoals.

Refer to Specification Section 00 43 39 for detailed MBE procedures and MBE forms.

The bidder is required to submit with its bid a completed Attachment A – Certified MBE Utilization and Fair Solicitation Affidavit and Attachment B – MBE Participation Schedule, as described in the MBE Procedures included in the bid solicitation documents. In accordance with COMAR, a new MBE liquidated damages provision has been added to the AIA Document A101 – 2007 Standard Form of Agreement Between Owner and Contractor, as amended by Washington County Board of Education (Article 8.7 in Specification Section 00 52 13).

Notice to Bidders: Please review the MBE Supplemental Information immediately preceding Attachment “A”. Bidders who wish to review GOSBA official documentation regarding the “New 60% Rule” can access it here: <http://wcpspurchasing.com/document/1382/mbe-new-60-rule>

19. Laws and Regulations

- a. The vendor will comply with all Federal, State, and local laws, ordinances and regulations pertaining to work under their charge. If the vendor performs any work which it knows or should know to be contrary to such laws, ordinance, and regulations and without such notices to the Owner they shall bear all costs arising therefrom.
- b. All vendors and subcontractors must abide by the Owner’s policies and regulations while working on school property.
- c. The vendor certifies that their firm adheres to or follows non-discriminatory practices with respect to the employment and promotion of personnel without regard to color, creed, race, sex, or national origin.

20. Employment of Child Sex Offenders and Persons with Uncontrolled Access to Students

- a. Be advised that individuals who are registered sex offenders are not eligible to work on any WCPS project. The awarded vendor(s) must initially check the Maryland Department of Public Safety & Correctional Services’ Maryland Sex Offender Registry and search for the name of any employee to be assigned to work on this project. This applies to subcontractors and material/equipment suppliers as well. For projects lasting more than a few months, the vendor will periodically re-check the names of workers against the registry to ensure ongoing compliance. In the event that a registered sex offender is

discovered to be working on a WCPS project, whether through employment by the vendor, subcontractor or equipment or material supplier, WCPS will notify the site superintendent to immediately remove the individual from the premises and permanently terminate his work assignment. The Owner may terminate this contract at no additional costs, as a result if the vendor is unable to demonstrate they have exercised care and diligence in the past in checking the Maryland registry.

- b. Contracted service providers who have regular, direct, and unsupervised access to children cannot begin service without undergoing the same process as new employees. If required, an awarded vendor(s) is responsible for payment of the full cost of the criminal background check.
- c. The awarded vendor(s), or subcontractor(s), may not knowingly assign an employee to work on WCPS school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified as a crime of violence.
- d. The awarded vendor(s) will not assign employees who has been convicted of an offense under § 3-307 or § 3-308 of the Criminal Law Article or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in the state.
- e. An awarded vendor will not assign an employee who has been convicted of a crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this state.

21. Drug, Alcohol, and Tobacco-Free Workplace

- a. Maryland State Law (COMAR 13A.02.04) provides that each local school system is required to maintain a tobacco-free school environment.
- b. All awarded vendors and subcontractors must abide by Board Policy GBEC while working on any WCPS property at all times.
- c. The Board of Education is committed to providing a safe and productive work environment consistent with the standards of the community in which it operates. Alcohol and drug use/abuse pose a threat to the health and safety of students and employees as well as to the security of equipment and facilities. The Board expects a work environment free of any use, possession, or distribution of alcohol or illegal drugs and the abuse of controlled or non-controlled substances.

22. Weapon Possession on School Property

- a. The criminal code of Maryland makes it illegal to possess a weapon on school property.
- b. Any awarded vendor(s) whose employees violate this clause may be subject to the termination of the contract for cause.

23. Illegal Immigrant Labor

The use of illegal immigrant labor to fulfill contracts solicited by WCPS is in violation of the law and is strictly prohibited. Awarded vendor(s) and subcontractors must verify employment eligibility of workers in order to assure that they are not violating federal/state/local laws regarding illegal immigration. A compliance audit may be conducted.

24. Protection of Resident Workers Clause

The contractor shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligation under this contract. The Immigration & Nationality Act (INA) includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired. The contractor shall establish appropriate procedures and controls so no services or products under the contract documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. For more information, visit the U.S. Citizenship and Immigration Services website: www.uscis.gov.

25. Public Information Act Notice

- a. Bidders should identify those portions of their solicitation, which they deem to be confidential, or to contain proprietary commercial information or trade secrets. Bidders should provide justification why such material, upon request, should not be disclosed by the Owner under the Public Information Act, Title 4, General Provisions Article, Annotated Code of Maryland.
- b. Unless portions of a solicitation are identified as confidential, all records are considered public. A person or governmental unit that wishes to inspect a public record, or receive copies of a public record, shall submit a written or electronic request.
- c. The Owner will notify the vendor if a Freedom of Information Act (FOIA) request is received in connection with a proposal that has confidential information identified.

26. Force Majeure

Force Majeure is defined as an occurrence beyond the control of the affected party and not avoidable by reason of diligence. It includes the acts of nature, war, riots, strikes, fire, floods, epidemics, terrorism, or other similar occurrences. If either party is delayed by Force Majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. The Owner may also consider requests for price increase for raw materials that are directly attributable to the cause of delay. The Owner reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure, and the vendor shall have no recourse against the Owner. Further, except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of Force Majeure as defined herein.

27. Non-Collusion

- a. Bidder represents and certifies that prices for these services have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition or any matter related to such prices with any competitor or other bidder. Prices quoted in this bid have not been knowingly disclosed directly or indirectly to any competitor or other vendor prior to the opening of this bid.
- b. Bidder represents and certifies that it has not employed or retained any other company or person (other than a full-time bona fide employee working exclusively for the bidder) with the primary intent to solicit or secure the contract.

28. Ethics Policy

- a. The Board of Education of Washington County has an Ethics Policy, which covers conflict of interest, financial disclosure, and lobbying. All bidders are expected to comply with any and all Ethics Regulation that may apply to them individually or as a business entity.
- b. All bidders should carefully review Board Regulation BBFE-R, Ethics Regulations, which prohibits WCPS employees from benefiting from business with the school system.

29. Conflict of Interest

The bidder will advise the Owner in writing as soon as possible, but not later than the date of the Bid/RFP opening, of any known relationships with a third party, or employee or representative of the Owner, which would present a significant advantage to one bidder over another bidder or present a conflict of interest with the rendering of products and services under this agreement.

30. False Statements

Bidders are advised that Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- a. In connection with a procurement contract a person may not willfully:
 - i. falsify, conceal, or suppress a material fact by any scheme or device;
 - ii. make a false or fraudulent statement or representation of a material fact; or
 - iii. 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.

31. Audit and Document Retention

The Awarded Vendor shall retain and maintain all records and documents relating to this contract for four (4) years after final payment or such longer period of time as required by law or rule or regulations. The Contractor shall: (i) maintain complete and accurate books and records regarding its business operations relevant to the calculation of amounts payable under the Contract and any other information relevant to the Contractor's compliance with the terms and conditions of the Contract; and (ii) upon WCPS' request, make such books and records, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection, audit, or reproduction by any authorized WCPS representative. WCPS shall: (a) provide the Contractor with reasonable prior notice of any audit; (b) undertake an audit not more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Contractor's normal business operations.

32. Right to Data

All data, reports and other documents generated for the Board, provided by the Board, and accumulated by the consultant/contractor in the performance of this order/award, shall remain the property of the Board, and shall be returned to the control of the Board upon completion of the contract. No personal student, employee, or Board information, as defined by federal and state law and Board policy, shall be disclosed or published unless otherwise agreed herein.

SECTION II - SPECIFIC TERMS AND CONDITIONS

1. Pre-Proposal Conference

A pre-proposal conference will be held at the date, time, and location listed on the coversheet of this Bid/RFP. Attendance at the pre-proposal conference is not required. However, all interested companies are encouraged to attend this important meeting. Attendance is not mandatory but strongly recommended and will assist the Owner in evaluating bids to determine if the bid can be considered responsive and/or responsible. Bidders may visit the site at their convenience, but all visits must be coordinated with the Contract Administrator listed on the cover sheet.

If WCPS offices are closed or operating on a modified schedule due to inclement weather on the day a Pre-Bid is scheduled, the Pre-Bid is canceled and will not be rescheduled unless an addendum is issued. Often when schools are closed due to inclement weather, administrative offices remain open. When in doubt, call the Purchasing Department (301-766-2840).

2. Questions and Inquiries

Questions and inquiries should be emailed to the Procurement Supervisor and Contract Administrator before the deadline identified on the cover page.

3. Contract Period

Construction shall be complete no later than August 14, 2026. The design/permit process/component ordering/etc. can begin as soon as the purchase order/contract is issued however installation shall not begin prior to June 22, 2026, without written confirmation from the Owner.

4. Design/Scope of Work

The elevator modernization and all associated equipment, necessary building/infrastructure modifications shall meet the requirements outlined in this RFP. Bidders are responsible for obtaining all necessary drawings/documents/design materials from professional architects/engineers, as necessary, to complete and meet all requirements and/or obtain all necessary permits for this project. The Owner will not be responsible for delays related to processing the permit application, reviewing drawings, resolving issues, and receiving all appropriate approvals to begin construction activities.

Prior to submitting permit applications, the contractor shall submit documentation to the Owner for approval.

5. Project Schedule

Activity	Completion Date
Permit Approvals	By April 2026
Construction Start	June 22, 2026
Construction Finish (Use/Occupancy Approved)	August 14, 2026
Final Completion	August 21, 2026

6. Pricing/Budget

Bidders shall submit a lump sum price for a turnkey installation. The Bidders shall include all pricing for design work, removal of the existing identified elevator (and associated) equipment, installation of new elevator equipment, and other building and equipment/modifications as necessary.

7. Warranty

The successful bidder warrants that the services/equipment will be delivered, installed, accepted, and will operate in accordance with this RFP, and further warrants against defective services for a minimum period of two (2) years. Equipment shall be new and covered minimally by the manufacturer's standard warranty of no less than two (2) years. Contractor warrants that it has the right and authority to grant to the Owner the equipment/services set forth herein. The contractor's warranty is in addition to the manufacturer's warranty.

8. Consent to No Exceptions

By submitting an offer in response to this RFP, the Bidder, if selected for an award, shall be deemed to have accepted the terms of this RFP and the Contract, unless an exception to any term/condition of this RFP or the Contract is explicitly written in the Proposal. A proposal that takes exception to any term or condition of the RFP/Contract will be subject to scrutiny and may be cause for a determination that the proposal is non-responsive. The Owner is under no obligation to engage in discussion with the bidder on the exception. The Owner may determine in its sole discretion that the proposed exception is not in the best interests of the Owner and/or its employees.

9. Award

It is the Owner's intent to award the contract to the firm which, based upon the criteria for evaluation, is the most responsive, responsible, and the most qualified to accomplish the scope of services (work) and whose services are deemed to be in the best interest of the Owner.

10. Right to Negotiate

The Owner retains the right to negotiate specific contractual terms for products, services, and pricing. However, each bidder should submit a best and final offer in their initial bid package. Based upon the initial price offers, the Owner may or may not conduct price negotiations or discussions with any/all Bidders. Based on a change in the specifications, or if the price offers exceed the available funds, the Supervisor of Purchasing may invite revised price offers. The Owner reserves the right, in its sole discretion, to award a contract based upon the original written proposals received without further discussion or negotiation.

11. Electronic Version

The RFP has been made available by electronic means to expedite the Proposal submittal process. The Bidder acknowledges and accepts fully the responsibility to ensure that no changes are made to this RFP. In the event of a conflict between a version of the RFP in the Bidder's possession and the Purchasing Department's version of the RFP, the document held by the Purchasing Department shall govern.

12. Authorized Dealers

Only manufacturers, or their authorized dealers, may bid on products and/or equipment requested herein. At the discretion of the Board of Education of Washington County a certificate, executed by the manufacturer, may be requested stating that the bidder is an authorized agent of the manufacturer and is duly authorized to service and maintain the products and/or equipment.

13. Permits

Permits and licenses necessary for the execution of the work will be secured and paid for by the vendor. Scheduling and coordination of all Inspections will be the responsibility of the vendor.

14. Local Licensing of Trade Persons

All trade persons performing work under this contract as a general contractor or a subcontractor must be licensed in accordance with the requirements of the authority having jurisdiction, local subdivision, and

State. Any cost incurred as a result of this licensing requirement shall be borne by the vendor.

15. Inspection of Site

- a. All visitors must report to and register in the main office. Each bidder should visit the site and become informed fully as to the condition under which the work is to be done. Failure to do so will not relieve a successful bidder of their obligation to supply all material and labor necessary to carry out the provisions of the contract documents at the price(s) bid.
- b. The bidder will perform field measurements, if applicable, and WCPS assumes no responsibility for errors in measurements. The bidder will be responsible for any costs associated as a result of an error in their measurements.
- c. Site visits will not be made after regular working hours, on Sundays, school holidays, or legal holidays, unless previously agreed to by the Contract Administrator.

16. Use of WCPS Services and Facilities

- a. It is understood that, except as otherwise stated in the contract documents, the vendor will provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction, and all other services and facilities of every nature necessary to execute, complete and deliver the work within the specified time.
- b. Contractor is to limit use of site and premises to allow WCPS's daily business operations. Existing Emergency Building Exits shall be usable at all times during Construction. Time Restrictions for Performing Work shall be 6:00 A.M. to 6:00 P.M. (dark) Monday thru Friday. Please note WCPS observes the following Holidays: Juneteenth (June 19th) and July 4th (July 2nd and 3rd) during this timeframe, and the facility will not be open for work on these dates. If Contractor access is needed for Saturday, Sunday or Holidays, then Contractor shall pay overtime for Custodial services for any interior access that needs to be performed. Access must be approved by WCPS prior to work, minimum 48 hours' notice, at a rate of \$25/hr with a 4-hour minimum, Holidays may incur additional charges. Work on non-holiday Friday's do not require an additional custodian fee.
- c. Any work necessary to be performed after regular working hours, on Sundays or legal holidays, will be performed with the approval of and without additional expense to WCPS, unless previously agreed to.
- d. Contractor will be able to utilize school restrooms during this project. The WCPS Project Manager will identify a restroom that can be utilized by construction staff for this project.
- e. Staging Area: The WCPS Project Manager will coordinate with the contractor and the school to determine acceptable staging area(s) for this work. The contractor will be responsible for ALL security measures on its staging area(s), subject to WCPS approval, and areas shall be returned to pre-construction conditions at the completion of the project.
- f. Site Badging Requirements: WCPS utilizes security badges for access to facilities. WCPS will provide one (1) Contractor's badge to the designated foreman or site superintendent for the General Contractor/Prime Contractor for this project. That individual will be responsible for all contractors (sub, etc.) on this job.
- g.
- h. Any work necessary to be performed after regular working hours, on Sundays or legal holidays, will be performed with the approval of and without additional expense to WCPS, unless previously agreed to.

17. Removal of Debris

- a. Contractors are responsible for removal of trash and debris and will confine their apparatus, materials, supplies, and equipment in such orderly fashion at the work site so that it will not unduly interfere with the progress of the work of any other contractor or the Owner.
- b. At the completion of the work, and before final payment is made, vendors will remove all trash and debris and will leave the work site clean, including site restoration. Vendors will remove all tools,

scaffolding, and surplus materials from and about the building. In case of dispute, WCPS may remove the trash and/or repair property and charge such costs to the contractor.

18. Protection of Work and Property

- a. The vendor will be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in the performance of this contract and will be responsible for observing the safety regulations of MOSHA, OSHA, and local life safety agencies.
- b. The vendor will erect and maintain, as required by conditions and progress of the work, all necessary safeguards for safety and protection, including fences, railing, barricades, lighting, posting of danger signs, and other warnings against hazards.
- c. The vendor will comply with applicable laws, ordinances, regulations, and orders of governing authorities having jurisdiction for the safety of persons and property to protect them from damage, injury, or loss. Any damage, loss, or injury resulting from the failure of the vendor to safeguard their work and WCPS property will be borne by the vendor.
- d. In the case of inclement weather, or an emergency that threatens the loss or damage of property or life safety, the vendor will be allowed to act in a diligent manner without instructions from WCPS. The vendor will notify the Contract Administrator of their actions as soon as possible. Any claim for compensation by the vendor due to such extra work will be submitted promptly to WCPS for approval.

19. Work Site Supervision

- a. The awarded vendor will provide full-time onsite supervision, who will have full authority to act on behalf of the vendor. The supervisor will represent the vendor in their absence and all directions/instructions given to them will be as binding as if given to the vendor. WCPS shall not be responsible for the acts or omissions of the superintendent or foreman.
- b. The vendor will immediately report to the Contract Administrator any error, inconsistency, or omission which they discover. The vendor will not be liable to WCPS for damages resulting from any errors or deficiencies in the contract documents or other instructions given by WCPS.

20. Inspections and Correction of Work

- a. All work, all materials, whether incorporated into the work or not, all processes of manufacture, and all methods of construction will be, at all times and places, subject to the inspection of WCPS, whose representatives shall be the final judge of the quality and suitability. Should these fail to meet this approval they will be forthwith reconstructed, made good, replaced, and/or covered, as the case may be, by the vendor at their own expense. Rejected material will be removed immediately from the site. If, in the opinion of WCPS, it is undesirable to replace any defective or damaged materials, or to reconstruct or correct any portion of the work, the compensation to be paid to the vendor shall be reduced by such amount as in the judgment of WCPS shall be equitable.
- b. If the specifications, laws, ordinances, or any public authority require any work to be specially tested or approved, the vendor will give WCPS timely notice of its readiness for observations. If the inspection is by another authority, the vendor will notify WCPS of the date fixed for such inspection and shall use the required Certificate of Inspection.
- c. WCPS may order re-examination of questioned work and, if so ordered, the vendor must uncover the work at their expense. If such work is found not to be in accordance with the contract documents, the

vendor will pay all costs to correct the work, to the satisfaction of WCPS. If another vendor employed by WCPS caused the defect in the work, WCPS shall pay such cost and recover the charges from the other vendor.

21. Changes in Work

All change Orders shall be subject to the following format for itemization of the costs:

- a. Attach an itemization of labor hours. A certified payroll affidavit may be required to substantiate labor rates. The cost of foreman and superintendents may be added only when the change order make necessary the hiring of additional supervisory personnel or makes their employment for time in addition to that required by the basic contract, or if the foreman or superintendent participates in the actual work of the Change Order.
- b. Labor burden percentage costs shall include all fringes, taxes, insurance, liabilities, workmen's compensation and unemployment. Labor burden percentage rates are subject to approval of the Owner and are not subject to profit and overhead.
- c. Attach an itemization of all materials used listing unit prices and extended prices.
- d. Attach an itemization of all equipment used and rental rates. If equipment is a rental, attach copy of rental invoice. Rental equipment and contractor-owner equipment costs shall include all costs associated with the equipment, i.e. transportation, set-up gas and oil. Rental rates shall not exceed rates established by local rental companies and "MEANS DATA" rates.
- e. Profit and overhead shall be considered full reimbursement for any additional expenses caused by the change order work. The Contractor shall agree to profit and overhead markup on work by his own forces as outlines in paragraph 10 below. These allowances for overhead and profit include among other costs; maintenance and/or operations of Contractor's regular established office, branch office, and other facilities; resident and/or non-actively engaged supervision; time keepers; clerks; stenographers' watchmen; cost of correspondence; increased item of warranty under the change.
- f. The cost of the bond (if required) is not subject to overhead and profit.
- g. A Change Order request shall not be considered unless submitted with all required and requested supporting documentation. All parties to the change shall use the Change Order Format.
- h. For all work to be performed by Subcontractor/Subcontractors, the Contractor shall furnish the Subcontractors' itemized proposal which shall contain original signatures by an authorized representative of the Subcontracting firm. If requested by the Owner or Architect, proposal from suppliers or other supporting data to substantiate the Contractor's or subcontractor's cost shall be furnished.
- i. Change Order costs shall not exceed unit pricing as provided in the Contract Documents.
- j. Unless otherwise specified, the allowable markup for combined overhead and profit, for work performed by the Contractor with his own forces will be based on the monetary value of the work in accordance with the following schedule.

VALUE OF WORK COMBINED OVERHEAD AND PROFIT

\$0 - \$1,000	15%
\$1,001 - \$5,000	10%
\$5,001 - \$10,000	7%
\$10,001 - \$25,000	5%
\$Over \$25,000	Negotiated, but not more than 5%

- k. For extra work performed by a Subcontractor with his own organization, the percentages for combined overhead and profit will be as outlined above. On the work partly or solely performed by a Subcontractor, the Contract will be allowed five percent (5%) of total costs of the Subcontractor's labor, materials, overhead and profit only.
- l. The Contractor shall submit all Change Order on the Owner's Change Order Request Form, which is attached in the Contractor Documents.

22. Liquidated Damages

This project is subject to Liquidated Damages. The Contractor agrees to perform the work in accordance with the schedule provided in 5. Project Schedule. If the work is not completed within the time period specified for the Construction Finish (i.e. Use/Occupancy is not yet approved for Owner/Student/Public Use), the Contractor will be liable for Liquidated Damages of \$1,000 per calendar day until Use and Occupancy of the Elevator is provided to the Owner.

23. Insurance Requirements

The Contractor shall purchase and maintain the following insurance coverages on an "occurrence" basis which shall be written for not less than the limits specified below or required by law, whichever is greater.

- a. Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:
 - o \$1,000,000 each occurrence;
 - o \$1,000,000 personal and advertising injury;
 - o \$2,000,000 general aggregate; and
 - o \$2,000,000 projects/completed operations aggregate
- b. This insurance shall include coverage for all of the following:
 - o General aggregate limit applying on a per project basis;
 - o Liability arising from premises and operations;
 - o Liability arising from actions of independent contractors;
 - o Liability arising from products and completed operations with such coverage to be maintained for two years after completion of Work;
 - o Contractual liability including protection for contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
 - o Liability arising from the explosion, collapse, or underground (XCU) hazards.
- c. Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:
 - o Liability arising out of ownership, maintenance or use of any auto (or hired and non-owned autos only if no owned autos); and
 - o Auto contractual liability.

- d. Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard “other states” coverage; employers liability insurance or its equivalent with minimum limits of:
- \$100,000 each accident for bodily injury by accident;
 - \$100,000 each employee for bodily injury by disease; and
 - \$500,000 policy limit for bodily injury by disease.
- e. Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:
- \$5,000,000 per occurrence;
 - \$5,000,000 aggregate for other than products/completed operations and auto liability; and
 - \$5,000,000 products/completed operations aggregate
 - And including all of the following coverages on the applicable schedule of underlying insurance:
 - i. Commercial general liability
 - ii. Business auto liability; and
 - iii. Employers’ liability.
- f. The Board of Education of Washington County, including its elected and appointed officials, officers, consultants, agents and employees and authorized volunteers, shall be named as additional insureds on the Contractor’s commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractors projects, installation, and/or services provided under this Contract. Such coverage shall extend to cover the additional insured(s) for liability arising out of the following:
- On-going operations; and
 - Projects and completed operations

The commercial general liability policy and the umbrella excess liability or excess liability policies, if required herein, must include additional insured language, which shall afford liability coverage for the exposures listed above.

- g. The certificate of insurance must be provided to the Owner prior to commencement of the Contract.

24. Hazardous Materials

There are no known Hazardous Materials within the Elevator Cab, hoist way or machine room. If Hazardous Materials are encountered, they will be handled as either a Change Order to this contract, or by the Owner. The Contractor is responsible for alerting the Owner of any Hazardous Materials as soon as they are identified.

25. Existing Elevator Maintenance Contract

The current WCPS Elevator Maintenance Provider will continue contracted maintenance responsibilities up until the date the Elevator is taken out of service for this work.

26. Tax Exemption

WCPS is NOT tax exempt.

SECTION III– PROPOSAL FORMAT

1. Proposal Response

a. **Technical Proposal**

Bidders shall submit all relevant technical information that will allow the Owner to properly evaluate the proposal and its adherence with the RFP. Technical proposals shall include the following:

- Elevator Installer
 - Years in Business
 - Number of employees
 - Elevator Installation Certifications/Authorizations (i.e. KONE, Otis, Schindler, etc.)
 - List of similar jobs completed in the last five (5) years
- Elevator Equipment Manufacturer
- Elevator Equipment Proposed and Warranty
- Itemized component list proposed to be modernized (*Note: this list will not relieve the Bidder/Contractor from the specified Scope of Work – If an item is missed on this list, or uncovered during the project, the Contactor will still be required to supply any unidentified or additional items to complete the total Scope of Work*).
- List of Subcontractors to be used on this project

Due to possible changes and/or additions to the specifications, proposals should not be submitted until after the question period ends. All changes will be processed through addenda to this solicitation package. **One (1) copy of the technical proposal is required with the submission.**

b. **Bid Form of Proposal**

This completed acknowledgement (blank form attached to this RFP) must accompany the technical proposal. The purpose of this is to transmit the proposal, provide the bidder's turn-key price, acknowledge the receipt of any addenda, and provide the person's name and contact information for questions about the bid. The acknowledgement must be signed by an individual who is authorized by the bidder to enter into a contract with the Owner if selected for award.

c. **Bid/Proposal Affidavit**

Bidder shall include a completed and signed Bid/Proposal Affidavit as part of its proposal in order to be considered for award of a contract.

d. **MBE Attachments A and B**

SECTION IV – PROPOSAL EVALUATION

1. Mandatory Responsiveness Requirements

To be eligible for consideration, a proposal must be received from a Bidder in a timely manner, properly signed by the Bidder, complete including all required forms, and fully compliant with bid proposal instructions. A technical proposal and a price proposal must be submitted in order for a Bidder to be considered for award.

2. General Evaluation

The Owner may make such investigations as are deemed necessary to determine the ability of a firm to provide the insurance coverage as specified herein.

The Owner reserves the right to clarify information submitted in a Proposal to determine whether an error has been made or whether a waiver of formality, informality or technicality is appropriate. Firms shall furnish to

the Owner all such information and data necessary for the Owner to determine if the Proposal is responsible and responsive to the Owner's requirements as stated herein.

3. Bid Evaluation

Proposals will be evaluated by the Owner to determine adherence to the requirements of the solicitation and which technical proposals meet the needs delineated in the Scope of Work. Proposals which are determined to be both responsible and responsive to the Owner's needs will be considered for award based on the lowest price.

SECTION V- SPECIFICATIONS AND SCOPE OF WORK

Part 1 General

1.1 SUMMARY

- a. This specification is intended to describe the modernization of one (1) hydraulic elevator, including (but not limited to), the complete replacement and installation of one (1) Certified Non-Proprietary hydraulic pump unit, controller, photo edge, and other updates as described herein. All work shall be performed in a workmanlike manner and is to be performed by a licensed elevator mechanic. In all instances where a device or a part of the equipment is referred to in the singular number, it is intended that such reference shall apply to as many such devices as are required to complete the installation. The Elevators will be brought up to new Code requirements for communication, and emergency services (audio/visual displays, call buttons, etc.) In addition, the elevator controls on all floors shall be converted from key operated to card reader/push button operated (after access is approved via the Card Reader).
- b. Work Included:
 1. All engineering, equipment, labor, and permits required to satisfactorily complete elevator modernization required by Contract Documents.
 2. Cartage and Hoisting: All required staging, hoisting, and movement to, on, and from the site including new equipment, reused equipment, or dismantling and removal of existing equipment.
 3. Unless specifically identified as "Reuse", "Retain", or "Refurbish", provide new equipment. Hoistway, pit, and machine room barricades as required.
 4. All work by others. This is a turn-key project.

1.2 CODE COMPLIANCE

- a. All work shall be performed in accordance with the latest revised editions (as of the date bids are taken) of the American Society of Mechanical Engineers/American National Standard Safety Code for Elevators and Escalators (ASME/ANSI A-17.1) in effect at this location, the National Electrical Code (NEC), requirements of the Americans with Disabilities Act (ADA), as well as any applicable local codes.
- b. All work shall meet all code requirements, and authority having jurisdiction (AHJ) requirements.

1.3 DEFINITIONS

- a. All terms contained herein shall be as defined in Section 3, ASME/ANSI A-17.1, latest edition. (State of Maryland currently under A17.1-2019)
- b. Reference to a device or a part of the equipment applies to the number of devices or parts
- c. required to complete the installation.
- d. Provisions of this specification are applicable to all elevators unless identified otherwise.

1.4 DRAWINGS

- a. Contractor shall prepare drawings showing the general arrangement and loads of the elevator equipment, as well as electrical characteristics, and other pertinent data. These drawings shall be approved and hoist way construction and size guaranteed before proceeding with fabrication and installation of the Elevator.
- b. Contractor may request existing drawings (including CAD backgrounds) from the Owner. Contractor is responsible to field verify). The Owner will share files with the Contractor upon request to assist with the design process. For all drawings or files provided by the Owner, the Owner does not guarantee, and is not responsible for, the accuracy of the drawings of the current building. It is the responsibility of the Contractor to field verify all dimensions, layouts, and incorporate necessary changes to provide an accurate/complete design.

1.5 QUALITY ASSURANCE

- a. Contractors and Sub-contractors subject to full compliance with non-proprietary aspects of this specification
- b. Both the Elevator Manufacturer and Elevator Installer shall be regularly engaged in the business of design, engineering, manufacturing, and installation of elevators of the type and character required by this specification.
- c. Qualified Elevator Manufacturers: Alternate Manufacturers must receive approval of Owner at least 14 days prior to bid date.
 - 1. Approved Hydraulic Elevator Manufactures: KONE, Otis, Schindler, Admiral, Action, Eastern, Delaware
- d. Warranty:
 - 1. Material and workmanship of installation shall comply in every respect with Contract Documents. Correct defective material or workmanship which develops within two (2) year from date of final acceptance of all work to satisfaction of Architect, Purchaser and/or Consultant at no additional cost, unless due to ordinary wear and tear or improper use or care by Purchaser.
 - 2. Defective is defined to include, but not be limited to: Operation or control system failures, car performance below required minimum, excessive wear, unusual deterioration, or aging of materials or finishes, unsafe conditions, the need for excessive maintenance, abnormal noise, or vibration, and similar unsatisfactory conditions.
 - 3. Retained Equipment: All retained components, parts, and materials shall be cleaned, checked, modified, repaired, or replaced so each component and its parts are in like new operating condition. Retained equipment must be compatible for integration with new systems. No pro-rations of equipment or parts shall be allowed.

1.6 DOCUMENT AND SITE VERIFICATION

- a. In order to discover and resolve conflicts or lack of definition which might create problems, Contractor must review Contract Documents and site conditions for compatibility with its product prior to submittal of quotation. Review existing structural, electrical, and mechanical provisions for compatibility with Contractor's products. Purchaser will not pay for change to structural, mechanical, electrical, or other systems required to accommodate Contractor's equipment.

1.7 PERMIT, TEST AND INSPECTION

- a. Obtain and pay for permit, license, and inspection fee necessary to complete installation.
- b. Perform test required by Governing Authority in accordance with procedure described in ASME A17.2 Guide for Inspection of Elevators, Escalators, and Moving Walks in the presence of Authorized Representative.
- c. Supply personnel and equipment for test and final review by Purchaser.

1.8 MAINTENANCE

- a. Warranty Maintenance: One (1) year, comprehensive coverage including 24/7 callback service.
 - 1. Provide preventative, routine, and repair maintenance to include all labor, parts, and materials for the entire system of each elevator(s) included in this proposal.
 - 2. Contractor shall provide scheduled systematic examinations, adjustments, cleaning and lubrication of all machinery, machinery spaces, hoistways and pits.
 - 3. PERFORMANCE TIMES, LEVELING AND CONTRACT SPEED: The control system shall be maintained to provide smooth acceleration and retardation. Contractor must maintain elevators in accordance with the original equipment manufacturer (O.E.M.) design performance specifications

(including floor-to-floor times, door timing, rated speed, group supervisory system, etc.). The door close pressure must never exceed 30 pounds. The following performance schedule shall be adhered to:

- I. Contract Speed: The contract speed shall be provided for up direction travel with full-capacity load in the elevator car. The speed in either direction under any loading condition shall not vary more than 10% of the contract speed.
 - II. In accordance with the ASME A17.1 Code, the elevators shall be maintained and adjusted to safely lower, stop and hold the car with a load of 125% of the rated capacity.
 - III. Leveling Accuracy: The elevator shall be adjusted to provide accurate leveling within 1/4" of the floor level without releveing regardless of load.
4. Response time:
- I. Regular Callback – no more than 2 hours.
 - II. Emergency Callback – no more than 1 hours.

PART 2 – PRODUCTS

2.1 SUMMARY

- a. One (1) Passenger Holeless Hydraulic Elevator.
- b. Unless specifically identified as "retain existing", provide new equipment.
- c. Modify other areas as necessary to meet Code requirements, and allow complete turnkey installation of Elevator via Related Work

New Equipment Disposition – Elevator Schedule

Number:	#1	Retain
Capacity:	2,500 lbs.	Retain
Class Loading:	Passenger Class A	Retain
Contract Speed:	100-115 FPM (25 HP, confirm w/manufacturer)	Retain
Controller:	Certified Non-Proprietary Microprocessor-Based System	New
Plunger/Cylinder		Retain - Replace Hydraulic Packing
Tank Assembly and Motor Valve		New
Power Characteristics:	480 Volts, 3 Phase, 60 Hertz (Field Verify)	Retain (Modify as Necessary)
Stops (Landings)	Two (2) Front	Retain
Openings:	Two (2) Front	Retain
Floors Served	1, 2	Retain
Travel:	14'-4" ± Field Verify	Retain
Clear Hoistway, Pit Depth, Clear Overhead, Minimum Clear Inside, Entrance Size, Entrance Type	Field Verify	Retain (Modify as Necessary)
Door Operation:	High Speed, Heavy-Duty, Door Operator, Minimum Opening Speed 3 F.P.S., Closed Loop	New
Door Protection	Infrared, Full Screen Device	New
Guide Rails:	Field Verify	Retain (Modify as Necessary)
Buffers:	Field Verify	Retain (Modify as Necessary)
Car Shell/Enclosure:		Retain (Modify as Necessary),
Cab Finishes		Retain - Modify as Necessary
Signal Fixtures:	LED Illumination Contractor's	New
Hall and Car Pushbutton Stations	Single Hall Pushbutton Riser	New
	Single Car Operating Panel	New
	Car and Hall Pushbuttons	New
Car Position Indicators:	Single Digital with Car Direction Arrows	New
	Firefighters' Control Panel New	New
In-car Lantern:	Adjustable Electronic chime or tone. Sound Twice for Down Direction	New
Communication System:	Self-Dialing, Vandal Resistant, New System: Push to Call, Two-Way Communication System with Recall, Tracking and Voiceless communication	New
Fixture Submittal	Drawings	New
Additional Features	Firefighter's Service, Phase I and II, including Alternate Floor Return	New
	Independent Service Feature	New
	Card Reader Provisions	New
	Applied Car Operating Panel	New
	Auto 2-way Leveling	New
	Multi-Beam I.R. Array Door Protection	New
	Tamper Resistant Fasteners for All Fastenings Exposed to the Public	New - as Necessary
	One (1) year Warranty Maintenance with 24-hour Call-Back Service	New
	Battery Return Unit (and/or connection to Emergency Generator)	As Required
	Wiring Diagrams, Operating Instructions And Parts Ordering Information	New

2.2 SITE CONDITION INSPECTION

- a. Prior to beginning installation of equipment, examine hoistway and machine room areas. Verify no irregularities exist which affect execution of work specified.
- b. Do not proceed with installation until work in place conforms to project requirements.

2.3 PRODUCT DELIVERY, STORAGE, AND HANDLING

- a. Deliver material in Contractor's original unopened protective packaging.
- b. Store material in original protective packaging. Prevent soiling, physical damage, or moisture damage.
- c. Protect equipment and exposed finishes from damage and stains during transportation, erection, and construction.
- d. Allocate available site storage areas and coordinate their use with Purchaser and other Contractors.
- e. Provide suitable temporary weather-tight storage facilities as may be required for materials that will be stored in the open.

2.4 INSTALLATION REQUIREMENTS

- a. Install all equipment in accordance with Contractor's instructions, referenced codes, specification, and approved submittals.
- b. Install machine room equipment with clearances in accordance with referenced codes and specification and approved submittals.
- c. Install all equipment so it may be easily removed for maintenance and repair.
- d. Install all equipment for ease of maintenance.
- e. Install all equipment to afford maximum accessibility, safety, and continuity of operation.

2.5 COLORS OF FACTORY-FINISHED EQUIPMENT

- a. All colors will be selected from the Manufacturer's standard range unless custom colors are specified herein.
- b. Submit samples of all standard colors available and/or specified custom colors for review and approval by Owner prior to ordering/installation.
- c. Submit samples of all specified architectural metals specified for review and approval.

2.6 MATERIALS AND FINISHES

- a. Steel
 1. Sheet Steel (Furniture Steel for Exposed Work): Stretcher-leveled, cold-rolled, commercial quality carbon steel, complying with ASTM A366, matte finish.
 2. Sheet steel (for Unexposed Work): Hot-rolled, commercial quality carbon steel, pickled and oiled, complying with ASTM A568/A568M-03.
 3. Structural Steel Shapes and Plates: ASTM A36.
- b. Stainless Steel: Type 302 or 304 complying with ASTM A240, with standard tempers and
- c. hardness required for fabrication, strength and durability. Apply mechanical finish on
- d. fabricated work in the locations shown or specified, Federal Standard and NAAMM
- e. nomenclature, with texture and reflectivity required to match Architect's sample. Protect with adhesive paper covering. No. 4 Satin: Directional polish finish. Graining directions as shown or, if not shown, in longest dimension.
- f. Aluminum: Extrusions per ASTM B221; sheet and plate per ASTM B209.
- g. Plastic Laminate" ASTM E84 Class A and NEMA LD3.1, Fire-Rated Grade (GP-50), Type7, 0.050" ± 005" thick, color and texture as follows:
 1. Exposed Surfaces: Color and texture selected by Architect.

2. Concealed Surfaces: Contractor's standard color and finish.

- h. Fire-Retardant Treated Particle Board Panels: Minimum 3/4" thick backup for natural finished wood and plastic laminate veneered panels, edged and faced as shown, provided with suitable anti-warp backing; meet ASTM E84 Class "I" rating with a flame-spread rating of 25 or less, registered with Local Authorities for elevator finish materials.
- i. Paint: Clean exposed metal parts and assemblies of oil, grease, scale, and other foreign matter and factory paint one shop coat of standard rust-resistant primer. After erection, provide one finish coat of industrial enamel paint. Galvanized metal need not be painted.
- j. Prime Finish: Clean all metal surfaces receiving a baked enamel paint finish of oil, grease, and scale. Apply one coat of rust-resistant primer followed by a filler coat over uneven surfaces. Sand smooth and apply final coat of primer.
- k. Baked Enamel Finish: Prime finish per above. Unless specified "prime finish" only apply and bake three (3) additional coats of enamel in the selected solid color.
- l. Entrance Field Paint. Clean all surfaces to remove dirt and grease. Sand and finish surfaces as necessary to remove pits, scratches, and properly prepare the surface for finish painting. Apply filler to ensure smooth surface; sand as necessary and apply one (1) coat of electrostatic enamel in the selected solid color.

2.7 CAR PERFORMANCE

- a. Car Speed: $\pm 10\%$ of contract speed under any loading condition.
- b. Car Capacity: Safely lower, stop and hold 125% of rated load.
- c. Car Stopping Zone: $\pm 1/4"$ under any loading condition.
- d. Door Opening Time: Seconds from start of opening to fully open: 3.1 seconds.
- e. Door Closing Time: Seconds from start of closing to fully closed: Door closing time shall be adjusted within code limits.
- f. Car Floor-to-Floor Performance Time: Seconds from start of doors closing until doors are 3/4 open (1/2 open for side opening doors) and car level and stopped at next successive floor under any loading condition or travel direction (12'-0" typical floor height): 12.5 seconds.
- g. Automatic Two Way Leveling - Automatic two way leveling at reduced speed shall be provided, designed to level the car to the floor, to tolerances required by Code, and, to maintain the car approximately level with the floor regardless of load or direction of travel. The car shall be maintained at an approximate level during all conditions of loading and unloading.

2.8 OPERATION

Microprocessor-Based

- a. Other Items:
 - 1. Independent Service: Provide controls for operation of each car from its pushbuttons only. Close doors by constant pressure on desired destination floor button or door close button. Open doors automatically upon arrival at selected floor.
- b. Firefighters' Service: Provide equipment and operation in according with Code requirements.
- c. Automatic Car Stopping Zone: Stop car within $1/4"$ above or below the landing sill. Maintain stopping zone regardless of load in car, direction of travel, distance between landings, hoist rope slippage, or stretch.
- d. Door Operation: Automatically open doors when car arrives at main floor. At expiration of normal dwell time, close doors. Reopen doors when car is designated for loading
- e. Standby Lighting and Alarm: Car mounted battery unit with solid-state charger to operate alarm bell and car emergency lighting. Battery to be rechargeable with minimum 5-year life expectancy.
- f. Battery Return Unit.

2.9 MACHINE ROOM EQUIPMENT

- a. Arrange equipment in machine room.
- b. Controller: NEW.
 1. Otis, Schindler, Virginia Controls, MCE, Smartrise, Alpha or approved equal.
 2. The controller will be of the CERTIFIED NON - PROPRIETARY microprocessor type, designed to control starting and stopping and to protect the motor from overload or excess current. All components shall be neatly contained within a NEMA 1 cabinet, power unit floor mounted, free standing or wall mounted, as space dictates.
 3. Controller must include features to protect overload and low oil and hot oil issues. Including backup battery lowering device in the event there is power loss.
 4. Wiring within the cabinet shall be contained within PVC duct and shall terminate at screw terminal strips that have box lugs. Terminal strips shall have indelible identifying markings.
 5. The Controller shall be designed for operation at 32 degrees C, ambient, and shall contain locking doors, vents, etc., as required to provide access to, and protection for, all components contained therein.
 6. All signage and data tags on the controller must meet A17.1 required standards of the current code year enforced at the time of installation.
 7. The selector shall be designed to provide the service specified herein.
 8. Protective Control Devices
 - I. The electrical control circuit shall be designed to protect against the following possible malfunctions:
 - If the system is low on hydraulic fluid, or, if the car fails to reach an upper floor within a predetermined time, the car will automatically return to the lowest floor and the doors will open to permit passenger egress. The doors will then close, and all control buttons except the "Door Open" and "Alarm" button will remain inoperative.
 - Protection against phase failure and/or phase reversal shall be provided.
 - If the system oil becomes too hot, the car will automatically return to the lowest floor and the doors will open to permit passenger egress. The doors will then close and all control buttons except the "Door Open" and "Alarm" button will remain inoperative.
- c. Power Unit: NEW.
 1. A power unit designed and manufactured for this service shall be furnished. It needs to include a constant displacement rotary screw type pump, motor, drive assembly, oil reservoir, hydraulic control valve and fitments required to provide the duty specified.
 2. The power unit will be mounted on vibration dampers designed to isolate the power unit from the building structure.
- d. Hydraulic, Muffler, Piping and Oil: NEW.
 1. Install 6" pipe sleeve for to/from oil line and foam insulate the new piping.
 2. Replace the short section of piping attached to the new pump/Power Unit. Inspect the existing hydraulic piping and only replace sections that are not in good condition/subject to future failure.
 3. A muffler will be provided in the oil line near, or in, the Power Unit, designed to reduce pulsation and noise which may be present in the flow of hydraulic fluid.

4. An ample supply of the recommended Hydraulic Fluid shall be provided to ensure proper operation of the elevator. When the elevator is at the top relief pressure the oil level should still be within 1-2 inches above the pump.

2.10 HOISTWAY EQUIPMENT

- a. Guide Rails: RETAIN guide rails in place where possible. Modify as Necessary or Required.
 1. Clean rails and brackets. Remove rust prep and paint.
 2. Check all rail and bracket fastenings.
 3. Slide guides: Retain – Replace Inserts.
- b. Terminal Stopping: NEW
- c. Electrical Wiring and Wiring Connections:
 1. Conductors and Connections: Copper throughout with individual wires and coded and connections on identified studs or terminal blocks. Use no splices or similar connections in wiring except at terminal blocks, control compartments, or junction boxes. Provide 10% spare conductors throughout. Run spare wires from car connection points to individual elevator controllers in the machine room. Provide four (4) pair of spare shielded communication wires in addition to those required to connect specified items. Tag spares in machine room.
 2. Conduit: Painted or galvanized steel conduit, EMT, or duct. Conduit size, ½" minimum. Flexible heavy-duty service cord may be used between fixed car wiring and car door switches for door protective devices.
 3. Traveling Cables: Flame and moisture-resistant outer cover. Prevent traveling cable from rubbing or chafing against hoistway or equipment within hoistway. Provide five (5) pair of shielded wires and two (2) RG-6/U type coaxial cables for card reader.
- d. Entrance Equipment:
 1. Door Hangers: RETAIN. Modify as necessary.
 2. Door Rollers. NEW. Existing Manufacturer or approved equal. (refresh kit).
 3. Door Track: RETAIN. Clean and sand.
 4. Door Interlocks: NEW. Existing Manufacturer or approved equal. (refresh kit).
 5. Door Spirator: NEW. Existing Manufacturer or approved equal. (refresh kit).
 6. Pick-up rollers and linkages: NEW. Existing Manufacturer or approved equal. (refresh kit).
- e. Hoistway Door Unlocking Devices: NEW. Existing Manufacturer or approved equal. At each landing provide hoist way access key switch. This provides safe access to service car.
- f. Hydraulic Plunger/Cylinder: RETAIN. – Replace Hydraulic Packing with Manufacturer or approved equal.
- g. Pit channel and Buffers: RETAIN
- h. Pit Emergency Stop Switch - An emergency stop switch shall be provided in the elevator pit, designed to bring the elevator to rest independent of the regular operating devices.
- i. Limit Switches – provide Code required limits switches at the top and bottom limits of travel

2.11 HOISTWAY ENTRANCES

- a. Frames: RETAIN.
- b. Door Panels: RETAIN – modify as necessary for other specified work.
- c. Sight Guards: NEW.
- d. Sills: RETAIN. Clean at all floors.
- e. Sill supports: RETAIN.
- f. Fascia, Toe Guards, and Hanger Covers: RETAIN.
- g. Struts and Headers: RETAIN.

- h. Braille: NEW, ADA compliant braille plates with floor designations to be provided on hoistway entrance jambs.

2.12 CAR EQUIPMENT

- a. Frame: RETAIN.
- b. Car top: RETAIN.
- c. Car front – RETAIN.
- d. Platform: RETAIN
- e. Cab Shell: RETAIN
- f. Guide Shoes: Replace slide guided inserts.
- g. Finish Floor Covering: RETAIN
- h. Sills: RETAIN
- i. Doors: RETAIN.
- j. Door Hangers: RETAIN – replace Rollers.
- k. Door Track: RETAIN. Clean and sand.
- l. Door Electrical Contact: NEW. Existing Manufacturer or approved equal.
- m. Door Clutch: NEW. Existing Manufacturer or approved equal.
- n. Restricted Opening Device: NEW. Existing Manufacturer or approved equal.
- o. Door Operator: NEW. Existing Manufacturer, GAL MOVFE, GAL MOVFRIL, or approved equal.
- p. Infrared Reopening Device: NEW Infrared Door Protection system. Janus Pana40 Plus or approved equal.
Provide multi-beam I.R. array protective device on the leading edge of each car door. The device shall stop/re-open doors before contacting a person or object in the doorway.
- q. Car Operating Panel: NEW
 1. One (1) car operating panel with faceplate, consisting of a metal box containing vandal resistant operating fixtures and constructed of stainless steel, satin finish.
 2. Suitably identify floor buttons, alarm button, door open button, door close button and emergency push to call button with SCS, Visionmark, or Entrada cast tactile symbols rear mounted. Configure plates per local building code accessibility standards including Braille. Locate operating controls no higher than 48" above the car floor; no lower than 35" for emergency push to call button and alarm button. Car Operating Panel shall be mounted in accordance with requirements of ADA, with regard to height of control buttons. Provide required tactile/braille tags as specified by ADA.
 3. Provide minimum 3/4" diameter raised, floor pushbuttons which illuminate to indicate call registration.
 4. Provide alarm button to ring bell located on car, and sound distress signal at control panel. Illuminate button when actuated.
 5. Provide keyed stop switch at bottom of car operating panel faceplate. Arrange switch to sound main control panel distress signal when actuated. Mark device to indicate "run" and "stop" positions.
 6. Provide "door open" button to stop and reopen doors or hold doors in open position.
 7. Provide "door close" button to activate door close cycle. Cycle shall not begin until normal door dwell time for a car or hall call has expired, except firefighters' operation.
 8. Provide firefighters' Phase II key switch with engraved instructions filled red. Include light jewel, buzzer, and call cancel button.
 - i. Provide firefighters' Phase II key switch. Include light jewel, buzzer, and call cancel button. Devices to be behind locked door with instructions on inside face of door.

9. Include the following controls in lockable service cabinet with function and operating positions identified by permanent signage or engrave legend.
 - i. Inspection switch.
 - ii. Light switch.
 - iii. Independent service switch.
 10. Provide black paint filled (except as noted), engraved, or approved etched signage as follows with approved size and font:
 11. Car number on main car operating panel.
- b. Car Top Control Station: NEW. Provide an Inspector's Operating Station on top of the elevator per Code.
 - c. Communication System:
 1. Provide ADA compliant "hands free" speaker phone/camera
 2. "Push to Call," two way communication instrument in car with automatic dialing, tracking, and recall features with shielded wiring to car controller in machine room.
 3. Provide dialer with automatic rollover capability with minimum two numbers.
 4. "Push to Call" button or adjacent light jewel shall illuminate and flash when call is acknowledged. Button shall match car operating panel pushbutton design. Provide uppercase "PUSH TO CALL", "HELP ON THE WAY" engraved signage adjacent to button.
 5. Provide "Push to Call" button tactile symbol, engraved signage, and Braille adjacent to button mounted integral with car front return panel.
 6. Provide video requirements to meet A17.1 2019.
 7. Connection of Communication System is to be completed/coordinated by Contractor as part of this Scope of Work.
 8. Furnish and install CAT6 cabling as required from elevator machine room to owner's network switch located in media center MDF room.
 - d. Provide Innovation Industries, PTL, or approved equal.
 - e. Include all ADAAG mandated audible/visual/tactile requirements.

2.13 CAR ENCLOSURE

- a. Car shell: RETAIN
- b. Cab finishes: RETAIN

2.14 HALL CONTROL STATIONS

- a. Pushbuttons: NEW. Provide one (1) riser with flush mounted faceplates. Include pushbuttons for each direction of travel which illuminate to indicate call registration. Include approved engraved message and pictorial representation prohibiting use of elevator during fire or other emergency situation as part of faceplate. Pushbutton design shall match car operating panel pushbuttons. Provide vandal resistant pushbutton and light assemblies. Provided enlarged faceplate to cover existing wall blockout and facilitate handicapped access requirements. Include approved engraved message and pictorial representation prohibiting use of elevator during fire or other emergency situation as part of faceplate. Provide any cutting and patching required. Finish to be satin stainless steel.
- b. 1st floor will need phase 1 fire recall 3 position key switch
- c. Provide Innovation Industries or approved equal.
- d. Include coordination, materials and work to PROVIDE card readers, data wiring, and connection of all controls and data as required. Connection of Communication and Security System (card readers) to applicable control panels is to be completed by the Contractor as part of this Scope of Work. Contractor will be responsible for coordinating installation/connection to main control panels with the Owner's security company

**Atlantic Security Inc,
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Phone 1-301-797-7700)**

, and all associated costs, to complete this work.

- e. Access control readers for elevator entrances shall be HONEYWELL ACCESS SYSTEMS OS40TOSDP Omni Smart Readers
 1. Provide single gang surface mounting style 13.56 MHz contactless smart card readers suitable for minimal space mounting configurations to be approved by Code, Authorities having jurisdiction, and Owner.
 2. Coordinate installation of readers with elevator contractor and OWNER. Authorized users must present card to reader to gain access to elevator. Operation to be consistent with existing WCPS schools.
 3. Provide one (1) HONEYWELL OS40TODP reader for each controlled elevator location/floor.
 4. Provide one (1) HONEYWELL MPA2MPSU Controller with battery to support elevator readers.
 5. Provide two (2) CAMDEN CM190/30 Manual bypass switches on controller cabinet to allow temporary elevator operation without card readers.
- f. Locate hall buttons on left side of opening (when in lobby) for handicap access.
- g. Provide spring loaded hall button cutout key switches in lieu of hall buttons. Keyed per owner's approval.
- h. Hall Control Operating Panel/Buttons may be key operated security use at owners' option.

2.15 SIGNALS

- a. In-car Lanterns: NEW - Illuminate up or down LED lights and sound electronic tone once for up and twice for down direction travel as doors open. Sound tone once for up direction and twice for down direction. Sound level shall be adjustable from 0-80 dBA measured at 5'-0" in front of hall control station and 3'-0" off floor. Provide adjustable car door dwell time to comply with ADA requirements relative to hall call notification time. Car direction lenses shall be arrow shaped with faceplates. Lenses shall be minimum 2-1/2" in their smallest dimension.
- b. Car Position Indicator: New - Alpha-numeric digital indicator containing floor designations and direction arrows a minimum of 1/2" high to indicate floor served and direction of car travel. Locate fixture in each car operating panel. When a car leaves or passes a floor, illuminate indication representing position of car in hoistway. Illuminate proper direction arrow to indicate direction of travel. Cover existing box with satin stainless plate.
- c. Faceplate Material and finish: Stainless Steel Satin finish all fixtures. Signal fixtures shall be manufacturer's standard, flat profile, 11 Ga. minimum faceplate thickness, #4 Stainless Steel finish.
- d. Floor Passing Tone: Provide an audible tone of no less than 20 decibels and frequency of no higher than 1500 Hz. To sound as the car passes or stops at a floor served.
- e. Provide Innovation Industries or approved equal.

2.16 RELATED WORK – MACHINE ROOM

- a. Where required, furnish and install fire stopping and patching of holes and voids in the elevator machine room, per code requirements.
- b. If required by code, paint the machine room walls and ceiling.
- c. Retain the elevator machine room door and frame.
- d. Furnish and install new elevator machine room door signage as required.
- e. If required, furnish and install one (1) 10 lb. class ABC fire extinguisher in the elevator machine room.

- f. If required to meet Code, furnish and install one (1) new 1.5-ton Mitsubishi P-Series ductless air conditioning unit, or approved equal, heat pump type with low ambient function to control the temperature in the machine room per manufacturer's recommendations. Provide Applicable DDC connection point on Unit to allow the Owner's Building Automation System (BAS) representative to connect to for future monitoring of temperature.
- g. The outdoor condenser unit location shall be on the rooftop. It shall be permanently installed on top of acceptable curbing, or cribbing, and utilize flashing/pitch pockets, etc. that are ALL designed for the built-up roof assembly and do not void the warranty. The roof installation was completed in 2012. It is under a 20 year Warranty with Firestone. FBPCO #UB1051, Warranties RO052078 and PF003797, and FBPCO #IE8202 Warranty RO052091. The condenser unit shall be located at least 30' from a building edge.
- h. Furnish and install condensate pump on the air conditioning indoor evaporator unit and drain to the nearest approved location.
- i. Both the HVAC (if required) and the pit sump pump will need to be incorporated into the BAS. WCPS's current BAS Contractor is:
Control Systems, Inc
934 Sweeney Dr. Suite 5
Hagerstown, MD
301-791-1155
Attention: Bobby Socks

2.17 RELATED WORK - HOISTWAY AND PIT AREA

- a. Where required, furnish and install fire stopping and patching to holes and voids within the hoistway, per code requirements.
- b. Where required, furnish and install cutting and patching at the lobby call stations, to match existing finish as close as possible.
- c. If required, repair/modify existing pit ladder to meet code requirements. If pit ladder is damaged beyond repair, or does not exist, furnish and install a new pit ladder, with grab bars 48" above sill, 4" of clearance on all sides, rungs at least 16" wide and to have a rung adjacent/flush with the entrance sill as required per code.
- d. Protect car enclosure, hoistway entrance assemblies, and special metal finishes from damage during the modernization period.
- e. The Elevator pit does not have an existing sump pump. If a sump pump is required by code, or any Authority having Jurisdiction, then it will need to be provided/installed by the Contractor. If an oil-minder type sump pump and associated controls, etc. are all required to meet code for installation to any Authority having Jurisdiction, then it will need to be installed.

2.18 RELATED WORK - POWER AND LIGHTING FOR ELEVATORS

- a. Provide all power, electrical and lighting modifications necessary to complete the Elevator Modernization Scope of Work and meet all code requirements. All electrical services are to be in accordance with the latest version of the NEC.
- b. Where required, furnish and install new LED light fixtures in the elevator machine room to reach 19-foot candles, as per code requirements.
- c. Where required, furnish and install three (3) LED lights with NEMA 3R enclosures in the elevator pit to reach 10- foot candles, as per code requirements.
 - I. Furnish and install one (1) new illuminated light switch in the elevator pit.
 - II. Furnish and install one (1) dedicated GFCI duplex receptacle in the elevator pit.
 - III. One (1) new light fixture in the pit is to be on battery backup, or an emergency circuit.

- d. Where required, furnish and install one (1) LED light fixture in each elevator lobby, as needed, to reach 10-foot candles at each hoistway sill, per code requirements.
- e. Where electrical modifications occur, furnish and install labelling of all disconnects within the machine room and all power sources used during the execution of the scope of work.
- f. If required, furnish and install power to new machine room air conditioner. Circuit to include: conduit, wire, and disconnects at condenser and evaporator.
 - i. Furnish and install convenience power at air conditioning condenser.
- g. Provide to relocate conduit from behind pit ladder location to meet code requirements.
- h. Where or if required, furnish and install telephone and or data service to the elevator with a 1900 box and necessary conduit within machine room to the elevator trough or controllers.
- i. The current Elevator operates on emergency generator power. This is a Design/Build turnkey project. If the design requires any system (including a battery in conjunction with the emergency generator) to be replaced/modified/installed/revised/etc. to meet code, this work will be completed by the Contractor as part of this scope of services.

2.19 RELATED WORK - FIRE ALARM

- a. Utilize the existing fire alarm system for the required elevator-related fire alarm additions. Coordinate and confirm scope with Owners Service Provider, Johnson Controls (JCI).
- b. Furnish and install smoke detectors in the elevator lobbies and machine room area, per code requirements.
- c. Furnish and install fireman's primary and alternate recall, and fireman's flashing hat signal to the elevator controllers.
- d. Provide for fire alarm pre-testing and programming.
- e. Standby for elevator recall testing and inspections.
- f. Where necessary, connect all card readers to fire alarm system. Coordinate with the Owner's security company (Atlantic Security Inc) as necessary

2.20 RELATED WORK -CARD ACCESS

- a. See 2.14 Hall Control Stations for details.
- b. Furnish and install new readers for the elevator lobbies on the first and second floors. Mount readers on or adjacent to hall station faceplates.
- c. Furnish and install new AMAG edge network controller(s) as required inside elevator machine room.
- d. Furnish and install CAT6 cabling as required from elevator machine room to owner's network switch located in media center MDF room.
- e. Assign network IP address and commission and program the panel and readers.
- f. Furnish and install relay outputs on the controller to interface with the elevator controller and all associated terminations.
- g. Swiping of a valid card will activate the elevator call button, allowing person to push the button to call the elevator.

2.21 RELATED WORK – SPRINKLER SYSTEM

This is a Design/Build turnkey project. If the design requires any system (including sprinkler piping, fire alarm, etc.) to be moved/modified/installed/revised/etc. to meet code, this work will be completed by the Contractor as part of this scope of services.

2.22 RELATED WORK – IT CABLING

This is a Design/Build turnkey project. The Contractor is responsible for all data wiring/terminations/testing/etc. for this project. If the design requires any IT system modifications to be moved/modified/installed/revised/etc. to meet code, this work will be completed by the Contractor as part of this scope of services.

PART 3 EXECUTION

3.1 SITE CONDITION INSPECTION

- a. Prior to beginning installation of equipment, examine hoistway and machine room areas. Verify that no irregularities exist which affect execution of work specified.
- b. Do not proceed with installation until work in place conforms to project requirements.

3.2 PRODUCT DELIVERY, STORAGE, AND HANDLING

- a. Deliver material in contractor's original, unopened protective packaging.
- b. Store material in original protective packaging. Prevent soiling, physical damage, or moisture damage.
- c. Protect equipment and exposed finishes from damage and stains during transportation, erection, and construction.

3.3 INSTALLATION

- a. Install all equipment in accordance with Contractor's instructions, referenced codes, specification, and approved submittals.
- b. Install machine room equipment with clearances in Accordance with referenced codes, and specification.
- c. Install all equipment so it may be easily removed for maintenance and repair.
- d. Install all equipment for ease of maintenance.
- e. Install all equipment to afford maximum accessibility, safety, and continuity of operation.
- f. The Contractor is responsible for all safety and security measures during the course of this work that minimally meet OSHA requirements. WCPS will review the installed safety measures by the Contractor and identify any additional areas of concern.

3.4 FIELD QUALITY CONTROL

- a. Work at jobsite will be checked during course of installation. Full cooperation with reviewing personnel is mandatory. Accomplish corrective work required prior to performing further installation.
- b. Have code Authority acceptance inspection performed and complete corrective work.

3.5 CLEANUP

- a. Keep work areas orderly and free from debris during progress of project. Remove packaging materials on a daily basis.
- b. Remove all loose materials and filings resulting from work.
- c. Clean machine room equipment and floor.
- d. Clean hoistways, car, car enclosure, entrances, operating and signal fixtures.

3.6 ACCEPTANCE REVIEW AND TESTS

- a. As a minimum:
 - i. Elevator hoistways and all equipment therein shall be cleaned and left free of rust, filings, welding slag, rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt, and dust. Include walls, building beams, sill ledges, and hoistway divider beams.

- II. Care shall be taken by work persons not to mark, soil, or otherwise deface existing or new surfaces. Clean and restore such surfaces to their original condition.

3.7 PURCHASER'S INFORMATION

- a. Include the following as minimums:
 - I. Printed instructions explaining all operating features.
 - II. Complete software documentation for all installed equipment.
 - III. Lubrication instructions, including recommended grade of lubricants.
 - IV. Parts catalogs listing all replaceable parts including Contractor's identifying numbers and ordering instructions.
 - V. Four (4) sets of keys for all switches and control features properly tagged and marked.
- b. Preventive Maintenance Contract: Furnish properly executed contract for continuing, preventive maintenance.

3.8 GENERAL REQUIREMENTS

- a. All required work, or "work by others", work typically done by others, and required modifications to existing systems not specified in this RFP shall be included in this scope of work for this Contractor. This is a turn key modernization project. Bidders / Contractors are expected to be professional Elevator Installers, and familiar with all Codes/Requirements to complete a successful turn key installation.
- b. Contractor shall provide 2 hard copies of an O&M manual and submit an electronic copy to the Owner.
- c. Contractor shall provide as-built drawings to the design engineer for review and final copy to the Owner.

4.0 STATE SCHOOL CONSTRUCTION SIGN

- a. A State school construction sign is required for this project. The sign shall be sized 6' x 8', and be of suitable material/design to withstand weather/exterior conditions for the duration of the project. Construction signage instructions, layout and colors can be found at:
<https://iac.mdschoolconstruction.org/wp-content/uploads/2025/03/Construction-Signage.pdf>
Installation of the sign must occur prior to work starting, and location shall be coordinated and approved by the Owner.

Standard Form of Proposal

WASHINGTON COUNTY PUBLIC SCHOOLS

Hagerstown, Maryland

Design Build Elevator Modernization at Boyd J. Michael III Technical High School

FORM OF PROPOSAL – RFP 2026-34

Proposal of _____
(Corporation, a partnership, or an individual hereinafter called "Bidder") organized and doing business and existing under the laws of the state of _____.

I/We as the Bidder, in compliance with the Invitation to Bid for the selected contract package included herein, have examined the Bidding Documents, and have become familiar with all the conditions surrounding the construction of the proposed project, including the availability of materials and labor, hereby propose to furnish all labor, materials, services and equipment necessary to properly complete the Work in accordance with the Contract Documents and Addenda, and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this Proposal is a part.

All prices include all applicable sales and/or use taxes; include all insurance premiums required and include all premiums for a Performance Bond and a Labor and Material Payment Bond in the sum of one hundred percent (100%) of the Contract price. A five percent (5%) Bid Bond shall be attached to the Proposal. The Bid Bond amount shall be computed on the Lump Sum Total Price inclusive of Alternate Values; shall be submitted with the Washington County Board of Education as the sole obligee and shall be issued for a minimum period of ninety (90) calendar days from the receipt of Bids.

PREQUALIFICATION

The solicitation document is available for viewing and download from the WCPS Purchasing Web site: www.wcpspurchasing.com. The bid solicitation document is made available to any person or company who chooses to obtain it from the website. All contractors who have obtained a copy of the document from the website or by other means may not be eligible to be awarded. Bids received from contractors who have not been prequalified prior to the bid opening date may be considered non-responsible. Only the WCPS Purchasing Department can grant pre-qualification approval. Only pre-qualified contractors are eligible to be awarded this project. Registration via the WCPS website is mandatory and is a two-step process. Approval at step one only of the application is not sufficient to be awarded construction work. WCPS Purchasing Department will notify each contractor in writing upon approval of the pre-qualification application.

COMPLETION TIME – SCHEDULE OF WORK

I/We as the Bidder, agree to begin to perform the Work at the time stated in the "Notice to Award/Proceed" and to substantially complete the entire work in accordance with the provisions of the Contract Documents. If this work is not completed within the time period specified, I/we will be liable for Liquidated Damages of \$1,000.00 per calendar day.

BASE BID A

Bidders furnish all labor, materials, services, and equipment necessary to properly complete the Work required for the project at **Boyd J. Michael III Technical High School as provided in RFP 2026-34** in strict accordance with the Contract Documents for the following lump sum total:

Lump Sum Total:

_____ DOLLARS
(Amount in Words)

\$ _____
(Amount in numbers)

BASE BID B (Including Prevailing Wage Rates)

Bidders furnish all labor, materials, services, and equipment necessary, utilizing Maryland Prevailing Wage rates, to properly complete the Work required for the project at **Boyd J. Michael III Technical High School as provided in RFP 2026-34** in strict accordance with the Contract Documents for the following lump sum total:

Lump Sum Total:

_____ DOLLARS
(Paying Prevailing Wage) (Amount in Words)

\$ _____
(Paying Prevailing Wage) (Amount in numbers)

UNIT PRICES

None

ADDENDA

The following Addenda have been received and reviewed and all Work therein is incorporated in the Bid Form of Proposal:

(If none please write "NONE"):

Addendum No.	Date
_____	_____
_____	_____
_____	_____

ATTACHMENTS

The following items are **mandatory** and are to be included with the Bid Form of Proposal and Technical Proposal and shall be completed by the Bidder:

1. WCPS Bid/Proposal Affidavit
2. Technical Proposal – As described in the bid solicitation documents
3. Bid Security AIA Document A310-2010 Bid bond
4. Completed Attachment A – Certified MBE Utilization and Fair Solicitation Affidavit
5. Attachment B – MBE Participation Schedule, as described in the MBE Procedures included in the bid solicitation documents

REPRESENTATIONS

I/We as the Bidder, have reviewed the bidding documents, and agree with the terms and conditions specified therein and submit this Bid Proposal in accordance.

The offeror confirms that the company is a registered vendor with eMMA (<http://emma.maryland.gov/>)

The Owner reserves the right to reject any or all Bids. The Owner shall have the right to waive informalities and irregularities in the bids and in the bidding process and to accept the Bid which, in the Owner’s judgment, is in the Owner’s own best interests. A Bid not accompanied by a required bid security, or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular, is subject to rejection.

No Bidder shall withdraw, modify, or cancel his bid, or any part thereof, for a minimum of sixty (60) calendar days after the receipt of bids. The undersigned shall complete the total Work within the timeframe previously stated once the Owner indicates acceptance of this Bid Proposal by way of a written “Notice of Award” or “Letter of Intent” within this minimum sixty (60) day time period, or any time thereafter before the Bid is withdrawn.

I/We certify that this Bid is made without previous understanding, agreement, or connection with any person, firm or corporation submitting a bid for the same items and/or services and is, in all respects fair and without collusion or fraud; that none of this company's officers, directors or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of Washington County, administrative or supervisory personnel or other employees of Washington County Public Schools have any interest in the bidding company except as follows: (complete if applicable)

Respectfully submitted,

By _____
(Company)

(Signature)

(Date)

(Printed Name)

(Title)

(Business Address)

(Phone)

(e-mail address)

(SEAL) If bid is by Corporation

I/we the bidder represent, and agree that it is a precedent to acceptance of this bid, that the bidder has not been a party to any agreement to bid of fixed or uniform price.

(Signature of Office & Title) (SEAL)

SUBSCRIBED AND SWORN to before me, a Notary Public in the State of _____, County of _____ City of _____ this _____ day of _____, 20__.

Commission Expires: _____

NOTICE: The Washington County Board of Education reserves the right to award any, all, or none due to budgetary constraints.

END OF FORM OF PROPOSAL

Bid/Proposal Affidavit

WASHINGTON COUNTY PUBLIC SCHOOLS
10435 Downsville Pike, Hagerstown, Maryland 21740

MANDATORY BID/PROPOSAL AFFIDAVIT

COMAR 21.05.08.07

Bidder shall complete and submit this bid/proposal affidavit to the Supervisor of Purchasing, Washington County Public Schools with the bid or offer.

A. AUTHORITY

I HEREBY AFFIRM THAT:

I (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors 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, subcontractor, or commercial customer 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 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 the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. Certification Regarding Minority Business Enterprises.

The undersigned bidder 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 contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or 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 or proposal.

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 the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

B-2. Certification Regarding Veteran-Owned Small Business Enterprises.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State 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 bid 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 21.11.12; 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) above.

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 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's

contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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 bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of 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 bids or proposals for a public or private contract; or

- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
- a) §7201, Attempt to Evade or Defeat Tax;
 - b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax
 - c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information
 - d) §7206, Fraud and False Statements, or
 - e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
- a) A court: (i) made the finding; and (ii) decision became final; or
 - b) The finding was: (i) made in a contested case under the Maryland Administrative Procedure Act; and (ii) not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland if:
- a) A court: (i) made the finding; and (ii) decision became final; or
 - b) The finding was: (i) made in a contested case under 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) 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 it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State

Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

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, § 17-702](#), Annotated Code of Maryland.

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

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

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

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 bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

By:

(Print name of Authorized Representative and Affiant)

(Signature of Authorized Representative and Affiant)

**AIA A701-2018 Instruction to Bidders as amended by
Washington County Board of Education**



AIA® Document A701® – 2018

Instructions to Bidders

for the following Project:
(Name, location, and detailed description)

See Invitation to Bid for Project Name, Location, and Detailed Description

THE OWNER:
(Name, legal status, address, and other information)

Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740

THE ARCHITECT:
(Name, legal status, address, and other information)

See Bid Specifications for Architect

TABLE OF ARTICLES

- 1 **DEFINITIONS**
- 2 **BIDDER’S REPRESENTATIONS**
- 3 **BIDDING DOCUMENTS**
- 4 **BIDDING PROCEDURES**
- 5 **CONSIDERATION OF BIDS**
- 6 **POST-BID INFORMATION**
- 7 **PERFORMANCE BOND AND PAYMENT BOND**
- 8 **ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS**

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™–2017, Owner’s Instructions to the Architect, Parts A and B will be completed prior to using this document.

ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, and all Addenda.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction AIA Document A201 as modified by the Owner, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents, including Drawings and Specification, by additions, deletions, clarification or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding alternate Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and a responsible and responsive Bidder is one who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:

- .1 the Bidder has read and understands the Bidding Documents;
- .2 the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- .3 the Bid complies with the Bidding Documents;
- .4 the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
- .5 the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- .6 the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

§ 2.1.2 Generally, neither law nor regulations make allowance for negligent errors either of omission or commission on the part of the bidders. Failure of the Bidder to thoroughly understand all aspects of the Solicitation before submitting its Bid will not act as an excuse to permit withdrawal of its Bid nor secure relief on plea of error.

§ 2.1.3 Once the Contract is awarded to the successful Bidder, no claims for any extra work will be allowed because of alleged impossibilities in the production of the results specified, or because of inadequate or improper plans or

specification, and whenever a result is required, the successful Bidder shall furnish any and all extras and make any changes needed to produce, to the satisfaction of the Owner, the required results.

§ 2.1.4 The Bidder shall warrant that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the bidder for the purpose of securing business. For breach or violation of the warrantee the Owner shall have the right to annul the Contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

§ 2.1.5 The Bidder, by the submission of this bid agrees that it will not discriminate on the basis of race, color, sex, age, ancestry/national origin, religion, disability, gender identity/expression, marital status, or sexual orientation in matters pertaining to this bid.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Distribution

(Paragraphs deleted)

§ 3.1.2 Bidders may obtain complete Bidding Document, from the issuing office designated in the advertisement or invitation to bid

§ 3.1.2 Paragraph deleted.

§ 3.1.3 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

§ 3.1.4 Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

§ 3.1.5 The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

§ 3.1.5.1 Technical drawings and specifications provided by the Owner for the purposes of this solicitation remain the sole property of the Owner. This information is provided for bidding and construction purposes and should not be posted publicly (physically or electronically) or shared with any other business, subcontractor, or individual not involved with the solicitation and subsequent construction that results from the drawings.

§ 3.1.5.2 The process for requesting access to Technical Drawings are detailed within the Invitation to Bid.

§ 3.2 Modification or Interpretation of Bidding Documents

§ 3.2.1 The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Owner of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

§ 3.2.2 Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing to the Owner for interpretation and / or clarification. All requests must be submitted in accordance with the Bid Documents.

(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)

§ 3.2.3 Modifications and interpretations of the Bidding Documents shall be made in writing by Addendum only.

§ 3.2.4 Paragraph deleted.

§ 3.3 Substitutions

§ 3.3.1 The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

§ 3.3.2 Substitution Process

§ 3.3.2.1 No substitution will be considered prior to receipt of bids unless a written request for approval has been received by the Owner at least ten days prior to the date for receipt of Bids.

(Paragraphs deleted)

Such requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution. The burden of proof of the merit of the proposed substitution is the responsibility of the proposer or where less than three (3) manufacturers or products are listed in the Specifications, or where the specification lists "or Approved Equal" as an acceptable product, the burden of proof of equivalency rests with the proposer and evidence shall be submitted to the Owner and reviewed by the Architect with final approval to be determined by the Owner. Criteria considered includes, but is not limited to, performance, materials, craftsmanship, quality control, certification procedures or requirements, warranty, installation procedures, etc. After the receipt of bids and award of the Contract, the Owner and Architect are under no obligation to review or approve requests for substitution or "approved equal" products that were not included in the project Specification. The Owner reserves the right to request a substitute at any time in the project in accordance with the Change Request process.

§ 3.3.2.2 Paragraph deleted.

§ 3.3.2.3 Paragraph deleted.

§ 3.3.3 Paragraph deleted.

§ 3.3.4 If a proposed substitution is approved, such approval shall be set forth in an Addendum.

§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 Addenda

§ 3.4.1 It is the responsibility of the Bidder to ascertain whether Addenda have been issued prior to submitting a Bid.

(Paragraph deleted)

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has reviewed all Addenda issued, and the Bidder shall acknowledge its receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents. Forms are not to be altered nor additional information added.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Paragraph deleted.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change" or as required by the bid form.

§ 4.1.6 Paragraph deleted.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

§ 4.1.8 The contractor or subcontractor shall use or supply American steel products in performance of this Contract in accordance with the annotated Code of Maryland, State Finance and Procurement Article 17-301 – 17-306 as implemented in the Code of Maryland Regulations (COMAR) 21.11.02.

§ 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required.

§ 4.2.1.1 Bid bond shall be in the amount of five percent (5%) of the total Bid and shall be submitted with the Owner as the sole obligee and shall be issued for a period of ninety (90) calendar days from the receipt of Bids.

§ 4.2.2 The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds as required in Article 7 within ten (10) days after the Notice of Award of the Contract, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

§ 4.2.3 If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 4.2.4 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning ninety (90) days after the opening of Bids, withdraw its Bid and request the return of its bid security.

§ 4.3 Submission of Bids

§ 4.3.1 A Bidder shall submit its Bid as indicated below:

(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit its Bid.)

Bids are to be submitted in accordance with the directions in the Invitation to Bid.

§ 4.3.2 The Standard Form of Proposal, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Bid number, Project name, the Bidder's name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.3 Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

§ 4.3.4 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.5 Unless otherwise specified within the bid documents a Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

§ 4.3.6 All prospective bidders must be currently pre-qualified with the Owner's Purchasing Department to be eligible to participate in the bidding process, unless stated otherwise in the bid.

§ 4.3.7 Upon request of the Owner, Bidders should be prepared to provide a list of major subcontractors after submission of bids and within two (2) business days of the request.

§ 4.3.8 Error in bids: Bidders or its authorized representatives are expected to read and review the bid solicitation documents in order to inform themselves as to the conditions, requirements, and specifications before bids are submitted. Failure to do so will be at the bidder's own risk and the bidder cannot secure relief from the plea of error. Generally, neither law nor regulations make allowance for errors either of omission or commission on part of bidders. In the case of an error in extension of prices in the bid, the unit price shall govern.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 Opening of Bids

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud.

§ 5.2 Rejection of Bids

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.2.1 The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the Work, and prospective Bidders may be required to furnish evidence of performance of similar projects of this magnitude and complication and all such information and data as requested. The Owner reserves the right to reject any bid if evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out obligations of the Contract and to complete the Work contemplated therein.

§ 5.2.2 Conditional Bids will not be accepted.

§ 5.2.3 The Owner also reserves the right to reject the bid of any Bidder who has previously failed to perform properly or complete on time, contracts of a similar nature, who is not in a position to perform the contract, or who has habitually and without just cause neglected the payment of bills or otherwise disregarded its obligations to Subcontractors, material, or employees. In determining the lowest responsible Bidder the following elements, in addition to those above mentioned, will be considered, whether the Bidder involved:

1. Maintains a place of business,
2. Has adequate plant equipment to do the work properly and expeditiously,
3. Has suitable financial status to meet the obligations incidental to the work,
4. Has appropriate technical experience.

§ 5.2.4 The Bidder will be required to establish to the satisfaction of the Owner the reliability and responsibility of the proposed Subcontractors and perform the Work described in the Bidding Documents pertaining to such proposed Subcontractors' respective trades.

§ 5.3 Acceptance of Bid (Award)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirement of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests. In the event of tie bids where all factors are equal, award shall be made to the Washington County Bidder, the out-of-County Bidder, the Bidder incorporated in the State of Maryland and the Bidder not incorporated in the State of Maryland, in that order of preference. If bidders within these geographical designations are equal as all factor of consideration the award shall be made by a coin toss.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 Paragraph deleted.

§ 6.2 Paragraph deleted.

§ 6.3 Submittals

§ 6.3.1 After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.
- .4 if stipulated, Contractor is to provide all information required in accordance with the State of Maryland's Minority Business Enterprise (MBE) program.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Owner will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Firm issuing bonds must be an A-rated or above bond company (AM Best rating) and be on the United States Treasury list and be licensed to do business in the State of Maryland.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 Paragraph deleted.

§ 7.1.4 As stipulated in the Bidding Documents, the selected bidder is to furnish PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND in the amount of not less than (100%) of the total amount of the contract covering the faithful performance of the Contract and the payment of all obligations arising there-under in such form and amount as specified in the Specifications. The premiums for said bonds shall be paid by the Bidder. Obtaining of bonds by the selected bidder shall be a condition precedent to effectuation of the Contract between the Owner and the selected bidder.

(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)

§ 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than ten (10) days following the date of Notice of Award. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 The bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney indicating the monetary limit of such power.

ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder
(Paragraphs deleted)

within the Solicitation Documents and may consist of the following:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor as modified by Owner.
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner.
- .3 Exhibit A – Specifications
- .4 Exhibit B – Drawings
- .5 Exhibit C – All Addenda issued.

ARTICLE 9 MISCELLANEOUS

(Paragraph deleted)

§ 9.1 OBJECTION OF AWARD

(Paragraphs deleted)

Any company objecting to the bid procedure or the recommendation for award has five (5) business days following the date of award by the Board of Education at a regular or special Business Meeting to file a written protest with the Superintendent of Schools. It is the company's responsibility to ascertain and confirm the date/time of the pertinent Board Meeting. The written appeal must be submitted on company letterhead, dated and signed by the senior officer in the company. The protest letter must include a request for review and ruling by the Owner, a detailed statement of the legal and factual grounds for the protest, including the resulting prejudice to the company, copies of relevant documents, and a statement of the form of relief being requested. Failure to comply with these instructions may result in the protest being deemed "not filed." Bid protests received later than five (5) days after the Board Meeting will result in the protest being deemed "not timely." Owner will not respond or address bid protests that do not conform to these instructions.

§ 9.2 eMaryland Marketplace Advantage (eMMA) Registration

Maryland law requires local and state agencies to post solicitations on eMaryland Marketplace Advantage (eMMA). Registration with eMaryland Marketplace is free. It is recommended that any interested supplier register at (<https://emma.maryland.gov/page.aspx/en/usr/login?ReturnUrl=%2fpage.aspx%2fen%2fbuy%2fhomepage>) regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.



Prevailing Wage Rates

STATE OF MARYLAND
DEPARTMENT OF LABOR
DIVISION OF LABOR AND INDUSTRY
PREVAILING WAGE SECTION
10946 Golden West Drive, Suite 160
Hunt Valley, MD 21031
(410) 767-2342

11/18/2025

REQUEST FOR ADVERTISEMENT AND NOTICE TO PROCEED

Scott Bachtell - Procurement Officer
Washington County Public Schools
10435 Downsville Pike
Hagerstown, MD 21740

Re: Design-Build Elevator Modernization at Boyd J. Michael, III Technical High School
Project No: L21F013/2026-34

Enclosed please find the Prevailing Wage Determination and Instructions for Contractors for the project referenced above.

Upon advertisement for bid or proposal of this project, you are requested to submit to this office the date and name of publication in which such advertisement appeared.

Once awarded, you are further directed to submit to this office, the NOTICE TO PROCEED for the project, complete with the date of notice, the name of the general contractor, and the dollar amount of the project. In addition, we ask that a representative of the prevailing wage Unit be invited to attend the Pre-Construction Conference.

Any questions concerning this matter may be referred to PrevailingWage@dllr.state.md.us

Sincerely,

Enclosures
Wage Determination
Instruction for the Contractor

Prevailing Wage Unit

PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR & SUBCONTRACTOR

The contractor shall electronically submit completed copies of certified payroll records to the Commissioner of Labor & Industry, Prevailing Wage Unit by going on-line to <https://www.dlir.state.md.us/prevwage> and following the instructions for submitting payroll information (NOTE: A contractor must register prior to submitting on-line certified payroll information).

If you have technical questions regarding electronic submittal, contact the Department at dldlirprevailingwage-dlir@maryland.gov.

All certified payroll records shall have an accurate week beginning and ending date. The contractor shall be responsible for certifying and submitting to the Commissioner of Labor and Industry, Prevailing Wage Unit all of their subcontractors' payroll records covering work performed directly at the work site. By certifying the payroll records, the contractor is attesting to the fact that the wage rates contained in the payroll records are not less than those established by the Commissioner as set forth in the contract, the classification set forth for each worker or apprentice conforms with the work performed, and the contractor or subcontractor has complied with the provisions of the law.

A contractor or subcontractor may make deductions that are (1) required by law; (2) required by a collective bargaining agreement between a bona fide labor organization and the contractor or subcontractor; or (3) contained in a written agreement between an employee and an employer undertaken at the beginning of employment, if the agreement is submitted by the employer to the public body awarding the public work and is approved by the public body as fair and reasonable.

A contractor or subcontractor is required to submit information on-line on their fringe benefit packages including a list of fringe benefits for each craft employed by the contractor or subcontractor, by benefit and hourly amount. Where fringe benefits are paid in cash to the employee or to an approved plan, fund, or program, the contribution is required to be indicated.

Payroll records must be electronically submitted and received within 14 calendar days after the end of each payroll period. If the contractor is delinquent in submitting payroll records, processing of partial payment estimates may be held in abeyance pending receipt of the records. In addition, if the contractor is delinquent in submitting the payroll records, the contractor shall be liable to the contracting public body for liquidated damages. The liquidated damages are \$10.00 for each calendar day the records are late.

Only apprentices registered with the Maryland Apprenticeship and Training Council shall be employed on prevailing wage projects. Apprentices shall be paid a percentage of the determined journey person's wage for the specific craft.

Overtime rates shall be paid by the contractor and any subcontractors under its contracts and agreements with their employees which in no event shall be less than time and one-half the prevailing hourly rate of wages for all hours worked in excess of ten (10) hours in any one calendar day; in excess of forty (40) hours per workweek; and work performed on Sundays and legal holidays.

Contractors and subcontractors employing a classification of worker for which a wage rate was not issued SHALL notify the Commissioner of Labor & Industry, Prevailing Wage Unit, for the purpose of obtaining the wage rate for said classification PRIOR TO BEING EMPLOYED on the project. To obtain a prevailing wage rate which was NOT listed on the Wage Determination, a contractor or subcontractor can look on the LABOR webpage under prevailing wage.

Contractors and subcontractors shall maintain a valid copy of proper State and county licenses that permit the contractor and a subcontractor to perform construction work in the State of Maryland. These licenses must be retained at the worksite and available for review upon request by the Commissioner of Labor and Industry's designee.

****Each contractor under a public work contract subject to Section 17-219 shall:**

1. Post a clearly legible statement of each prevailing wage rate to be paid under the public work contract; and
2. Keep the statement posted during the full time that any employee is employed on the public work contract.
3. The statement of prevailing wage rates shall be posted in a prominent and easily accessible place at the site of the public work.

****Penalty - Subject to Section 10-1001 of the State Government Article, the Commissioner may impose on a person that violates this section a civil penalty of up to \$50.00 per violation.**

Under the Maryland Apprenticeship and Training Council requirements, consistent with proper supervision, training and continuity of employment and applicable provisions in collective bargaining agreements, a ratio of one journey person regularly employed to one apprentice shall be allowed. No deviation from this ratio shall be permitted without prior written approval from the Maryland Apprenticeship and Training Council.

Laborers may NOT assist mechanics in the performance of the mechanic's work, NOR USE TOOLS peculiar to established trades.

ALL contractors and subcontractors shall employ only competent workers and apprentices and may NOT employ any individual classified as a HELPER or TRAINEE on a prevailing wage project.

The State Apprenticeship and Training Fund (Fund) law provides that contractors and certain subcontractors performing work on certain public work contracts are required to make contributions toward apprenticeship. See §17-601 through 17-606, State Finance and Procurement, Annotated Code of Maryland. Contractors and subcontractors have three options where they can choose to make their contributions: (1) participate in a registered apprenticeship training program; (2) contribute to an organization that has a registered apprenticeship training program; or (3) contribute to the State Apprenticeship and Training Fund.

The Department of Labor (LABOR) is moving forward with final adoption of regulations. The regulations were published in the December 14, 2012 edition of the Maryland Register.

IMPORTANT: Please note that the obligations under this law will become effective on JULY 1, 2013. This law will require that contractors and certain subcontractors make contributions toward apprenticeship and report those contributions on their certified payroll records that they submit pursuant to the prevailing wage law.

The Department is offering outreach seminars to any interested parties including contractors, trade associations, and any other stakeholders. Please contact the Department at dldlprevailingwage-dllr@maryland.gov or (410) 767-2968 for seminar times and locations. In addition, information regarding this law will be provided at pre-construction meetings for projects covered by the Prevailing Wage law.

**For additional information, contact:
Division of Labor and Industry
Maryland Apprenticeship and Training
1100 North Eutaw Street, Room 606
Baltimore, Maryland 21201
(410) 767-2246
E-Mail Address: matp@dllr.state.md.us.**

STATE OF MARYLAND
DEPARTMENT OF LABOR
DIVISION OF LABOR AND INDUSTRY
PREVAILING WAGE SECTION
1100 N. Eutaw Street, Room 607
Baltimore, MD 21201
(410) 767-2342

The wage rates to be paid laborers and mechanics for the locality described below is announced by order of Commissioner of Labor and Industry.

It is mandatory upon the successful bidder and any subcontractor under him, to pay not less than the specific rates to all workers employed by them in executing contracts in this locality. Reference: Annotated Code of Maryland State Finance and Procurement, Section 17-201 thru 17-226.

These wage rates were taken from the locality survey of 2024 for Washington County, issued pursuant to the Commissioner's authority under State Finance and Procurement Article Section 17-209, Annotated Code of Maryland or subsequent modification.

****Note:** If additional Prevailing Wage Rates are needed for this project beyond those listed below, contact the Prevailing Wage Unit. Phone: (410) 767-2342, email: prevailingwage@dllr.state.md.us.

Name and Title of Requesting Officer: Scott Bachtell - Procurement Officer
 Department, Agency or Bureau: Washington County Public Schools
 10435 Downsville Pike Hagerstown, MD 21740

Project Number
L21F013/2026-34

Location and Description of work:

Washington County: Elevator Modernization at Boyd J. Michael, III Technical High School

Determination Number
64140

Date of Issue: Nov 18, 2025

BUILDING CONSTRUCTION

CLASSIFICATION	MODIFICATION REASON	BASIC HOURLY RATE	BORROWED FROM	FRINGE BENEFIT PAYMENT
BALANCING TECHNICIAN	CR	\$47.92		\$24.44
BRICKLAYER	CR	\$33.46	001	\$25.04
CARPENTER	CR	\$30.00		\$21.25
ELECTRICIAN	CR	\$40.00		\$20.20
ELEVATOR MECHANIC	CR	\$56.36		\$45.50
FIRESTOPPER	CR	\$29.81		\$10.08
GLAZIER	CR	\$35.60		\$14.41
INSULATION WORKER	CR	\$40.02		\$19.92
IRONWORKER - REINFORCING	CR	\$30.69	001	\$24.40
IRONWORKER - STRUCTURAL	CR	\$30.69	001	\$24.40
MILLWRIGHT	CR	\$35.82	001	\$20.01

PAINTER	CR	\$28.71		\$17.22
PLUMBER	CR	\$46.21		\$24.90
POWER EQUIPMENT OPERATOR - BACKHOE	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - BULLDOZER	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - CONCRETE PUMP	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - CRANE	CR	\$41.00		\$18.10
POWER EQUIPMENT OPERATOR - DRILL - RIG	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - EXCAVATOR	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - FORKLIFT	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - LOADER	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - MECHANIC	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - OILER	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - ROLLER - EARTH	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR - SKID STEER (BOBCAT)	CR	\$36.02	001	\$16.70
POWER EQUIPMENT OPERATOR-VACUUM TRUCK	CR	\$37.50		\$14.85
ROOFER/WATERPROOFER	CR	\$30.00		\$17.46
SHEETMETAL WORKER (INCLUDING METAL ROOFING)	CR	\$34.12		\$24.69
STEAMFITTER/PIPEFITTER	CR	\$46.21		\$24.90

LABORER GROUP II

LABORER - ASPHALT RAKER	CR	\$23.81	001	\$22.70
LABORER - COMMON	CR	\$23.81	001	\$22.70
LABORER - CONCRETE PUDDLER	CR	\$23.81	001	\$22.70
LABORER - CONCRETE TENDER	CR	\$23.81	001	\$22.70
LABORER - CONCRETE VIBRATOR	CR	\$23.81	001	\$22.70
LABORER - DENSITY GAUGE	CR	\$23.81	001	\$22.70
LABORER - FIREPROOFER - MIXER	CR	\$23.81	001	\$22.70
LABORER - FLAGGER	CR	\$23.81	001	\$22.70
LABORER - GRADE CHECKER	CR	\$23.81	001	\$22.70
LABORER - HAND ROLLER	CR	\$23.81	001	\$22.70
LABORER - JACKHAMMER	CR	\$23.81	001	\$22.70
LABORER - LANDSCAPING	CR	\$23.81	001	\$22.70
LABORER - LAYOUT	CR	\$23.81	001	\$22.70
LABORER - LUTEMAN	CR	\$23.81	001	\$22.70
LABORER - MORTAR MIXER	CR	\$23.81	001	\$22.70
LABORER - PLASTERER - HANDLER	CR	\$23.81	001	\$22.70
LABORER - TAMPER	CR	\$23.81	001	\$22.70

LABORERS GROUP I

LABORER - AIR TOOL OPERATOR	CR	\$23.99	001	\$22.70
LABORER - ASPHALT PAVER	CR	\$23.99	001	\$22.70
LABORER - BLASTER - DYNAMITE	CR	\$23.99	001	\$22.70
LABORER - BURNER	CR	\$23.99	001	\$22.70
LABORER - CONCRETE SURFACER	CR	\$23.99	001	\$22.70
LABORER - HAZARDOUS MATERIAL HANDLER	CR	\$23.99	001	\$22.70
LABORER - MASON TENDER	CR	\$23.99	001	\$22.70
LABORER - PIPELAYER	CR	\$23.99	001	\$22.70
LABORER - SCAFFOLD BUILDER	CR	\$23.99	001	\$22.70

Incidental Craft Data: Caulker, Man Lift Operator, Rigger, Scaffold Builder, and Welder receive the wage and fringe rates prescribed for the craft performing the operation to which welding, scaffold building, rigging, operating a Man Lift, or caulking is incidental.

These **Informational Prevailing Wage Rates** may not be substituted for the requirements of pre-advertisement or onsite job posting for a public work contract that exceeds \$250,000 in value and either of the following criteria are met: (1) the contracting body is a unit of State government or an instrumentality of the State and there is any State funding for the project; or (2) the contracting body is a political subdivision, agency, person or entity (such as a county) and the State funds 25% or more of the project.

Modification Codes:

- (AD) 17-209 Annual Determination from Survey Wage Data Received
- (CH) 17-211 Commissioners' Hearing
- (CR) 17-208 Commissioners' Review
- (SR) 17-208 Survey Review by Staff

Each "Borrowed From" county is identified with the FIPS 3-digit county code unique for the specific jurisdiction in Maryland.

For additional information on the FIPS (Federal Information Processing Standard) code, see <http://www.census.gov/datamap/fipslist/AllSt.txt>

The Prevailing Wage rates appearing on this form were originally derived from Maryland's annual Wage Survey. The Commissioner of Labor & Industry encourages all contractors and interested groups to participate in the voluntary Wage Survey, detailing wage rates paid to workers on various types of construction throughout Maryland.

A mail list of both street and email addresses is maintained by the Prevailing Wage Unit to enable up-to-date prevailing wage information, including Wage Survey notices to be sent to contractors and other interested parties. If you would like to be included in the mailing list, please forward (1) your Name, (2) the name of your company (if applicable), (3) your complete postal mailing address, (4) your email address and (5) your telephone number to PWMAILINGLIST@dllr.state.md.us. Requests for inclusion can also be mailed to: Prevailing Wage, 1100 N. Eutaw Street - Room 607, Baltimore MD 21201-2201.

**Minority Business Enterprise (MBE) Procedures - Attachment
A and Attachment B**

**MINORITY BUSINESS ENTERPRISE PROCEDURES
FOR
STATE FUNDED PUBLIC SCHOOL CONSTRUCTION
PROJECTS**

Revised July 2020

**Approved by the Washington County Board of Education on April 5,
2022.**

**These procedures supersede the latest procedures which were
previously approved on November 6, 2008**

DATE OF ORIGINAL APPROVAL: June 21, 2005

DATE OF APPROVAL OF REVISION: April 5, 2022

These procedures were approved by the Interagency Committee on School Construction on July 2020 and shall be utilized by each public school system in Maryland as a condition for the receipt of State funds through the Public School Construction Program.

The effective date for implementation for projects in Washington County is April 5, 2022.

**MINORITY BUSINESS ENTERPRISE PROCEDURES FOR STATE
FUNDED PUBLIC SCHOOL CONSTRUCTION PROJECTS**

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MINORITY BUSINESS ENTERPRISE PROCEDURES FOR STATE FUNDED PUBLIC SCHOOL CONSTRUCTION PROJECTS

BACKGROUND

In 1978, the Maryland General Assembly passed legislation, which was signed into law to establish the State's Minority Business Enterprise Program. This new law set as a goal that at least 10 percent of each unit of State government's total dollar value of procurement contracts for purchases and/or contracts be awarded to minority business enterprises. This law was subsequently modified and the goal was increased to 14 percent. In 2001 the General Assembly significantly changed the program, setting the overall goal to 25 percent with subcontracting sub-goals of 7 percent for certified African American-owned businesses and 10 percent for certified women-owned businesses. In 2012, the General Assembly passed legislation authorizing the Governor's Office of Minority Affairs (GOMA), in consultation with the Maryland Department of Transportation (MDOT) and the Office of the Attorney General, to set the overall aspirational MBE goal every two years. GOMA proposed the increase to 29% after considering several factors prescribed by law, including the relative availability of minority- and women-owned businesses as demonstrated by the State's most recent Disparity Study, as well as the past participation of MBEs in state procurement. The 29% goal will be in place for fiscal years 2021 and 2022 on State-funded contracts.

In 1979, the Rules, Regulations, and Procedures for the Administration of the School Construction Program were revised by the Board of Public Works to require each local board of education to adopt procedures to attempt to include minority business enterprises in State funded school construction projects. The State law was revised and now states: "The Interagency Committee on School Construction (IAC) shall require each local board of education to adopt procedures consistent with this chapter before obtaining funds for public school construction projects".

In May 2007, the Rules, Regulations, and Procedures were replaced by regulations. The regulations concerning project procurement (COMAR 23.03.03) indicate that the State's minority business enterprise goals and procedures apply to all State funded projects, irrespective of procurement method.

In July 2011, a Sub-Goal Directive was issued by the Governor's Office of Minority Affairs (GOMA). This Directive established the process for setting contract-by-contract sub-goals. Sub-goals consistent with demonstrated underrepresentation were pre-established within the Directive.

The 2012 MBE Program statute directs the Board of Public Works (BPW) to issue regulations that:

- Requiring bidders or offerors to complete a bid document that specifies the overall percentage of the contract they agree to achieve through MBEs clarifies that the documents the bidder or offeror submits for its MBE participation commitments must be made part of the executed contract with the State; and
- Requires that every contract that includes MBE participation goals contain a liquidated damages provision in the event that the prime contractor does not comply in good faith with its MBE participation commitments.

OVERVIEW

This Minority Business Enterprise (MBE) procedure document was originally developed in response to a requirement set forth in the Rules, Regulations, and Procedures for the Administration of the School Construction Program. The MBE requirement was initially established under HB 64, which was passed in the 1978 session of the Maryland General Assembly and signed into law as Chapter 575 of the Acts of 1978.

Since the Board adopted its original Minority Business Enterprise Procedures, there have been changes in State statutes, regulations adopted by the Board of Public Works, procedural requirements, project eligibility requirements and the sub-goals to be set for school construction projects. This revised procedure is consistent with current legislation and the changes to the Code of Maryland Regulations (COMAR) requirements, effective November 7, 2005, May 21, 2007, and November 14, 2011.

The revised procedures issued by GOMA in July 2011 provide guidance for establishing overall goals that are contract-specific and reasonable, and for setting subgoals only on contracts that actually have subcontracting opportunities. The procedures for setting overall MBE goals have not changed, however once the overall goal is decided by the Procurement Review Group (PRG), the subgoal analysis must be completed for contracts that have a total potential MBE participation over a minimum threshold amount, as defined for specific Major Industry Categories.

All activities funded through the Public School Construction Program fall within Construction in the Major Industry Categories. In place of the original goals of 7 percent for African American-owned businesses and 10 percent for certified women-owned businesses, the subgoals for construction are now 8 percent for African American-owned businesses and 11 percent for women-owned businesses. Subgoals are not to be set for other minority groups, which may however be represented in the overall contract goal.

1.0 PURPOSE

The purpose of the Procedures is to fulfill the intent of the law and the guidelines issued by GOMA by setting appropriate goals for minority business enterprise participation in every contract that includes State funding through the Public School Construction Program (PSCP). Local Educational Agencies (LEAs) shall attempt to achieve the result that a minimum of 29 percent of the total dollar value of all construction contracts is made directly or indirectly with certified minority business enterprises when State PSCP funds are utilized, with a minimum of 8 percent from certified African American-owned businesses, a minimum of 11 percent from certified women-owned businesses, and the balance from any certified minority business enterprises. All general contractors, including certified MBE firms, when bidding as general or prime contractors are required to attempt to achieve the MBE subcontracting goals from certified MBE firms.

2.0 EFFECTIVE DATE

These procedures have been adopted for use in _____ County and supersede previously utilized MBE procedures, and will take effect on _____ or after _____, in accordance with Title 14, §3, State Finance and Procurement Article, effective July 1, 2011.

3.0 DEFINITIONS

1. **Certification** means the determination that a legal entity is a minority business enterprise consistent with the intent of Subtitle 3 of the State Finance and Procurement Article.
2. **Certified Minority Business Enterprise** means a minority business that holds a certification issued by the Maryland State Department of Transportation (MDOT).
3. **Corporation**, as defined by MDOT, is an artificial person or legal entity created by or under the authority of the laws of any state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but also manufacturing, mining, banking, insurance, transportation and other forms of commercial or industry activity where the purpose of the organization is profit. For eligibility for certification, disadvantaged and/or minority individuals must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued by the corporation. (Note: stock held in trust is not considered as stock held by the disadvantaged businesspersons when computing the business person(s) ownership.)
4. **Managerial Control**, as defined by MDOT, means that a disadvantaged or minority owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of a business. Control may be demonstrated in many ways. For a minority owner to demonstrate control, the following examples are put forth, but are not intended to be all inclusive:
 - a. Articles of Incorporation, Corporate Bylaws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the minority owner's control thereby preventing the minority owner from making those decisions which affect the destiny of a business;
 - b. The minority owner shall be able to show clearly through production of documents the areas of the disadvantaged business owner's control, such as, but not limited to:
 - 1) Authority to sign payroll checks and letters of credit;
 - 2) Authority to negotiate and sign for insurance and/or bonds;
 - 3) Authority to negotiate for banking services, such as establishing lines of credit; and
 - 4) Authority to negotiate and sign for contracts.
 - c. Agreements for support services that do not lessen the minority owner's control of the company are permitted as long as the disadvantaged or minority business owner's authority to manage the company is not restricted or impaired.
5. **Minority Business Enterprise (MBE)** means any legal entity, except a joint venture, that is (a) organized to engage in commercial transactions, and (b) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged including: African Americans; American Indian/Native Americans; Asians; Hispanics; Physically or mentally disabled individuals; Women; or A non-profit entity organized to promote the interests of physically or mentally disabled individuals.
6. **Minority Business Enterprise Liaison** means the employee of the school system designated to administer the Minority Business Enterprise Procedures for State funded public school construction projects.
7. **Operational Control**, as defined by MDOT, means that the disadvantaged or minority owner(s) must possess knowledge necessary to evaluate technical aspects of the business entity. The primary consideration in determining operational control and the extent to which the disadvantaged or minority owner(s) actually operates a business will rest upon the specialties of the industry of which the business is a part. The minority owner should have a working knowledge of the technical requirements needed to operate in his/her industry. Specifically, in the construction industry and especially among small (one to five person firms) contractors, it is reasonable to expect the disadvantaged or minority owner(s) to be knowledgeable of all aspects of the business. Accordingly, in order to clarify the level of operational involvement which a minority owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:
 - a. The minority owner should have experience in the industry for which certification is being sought; and
 - b. The minority owner should demonstrate that basic decisions pertaining to the daily operations of the business are independently made. This does not necessarily preclude the disadvantaged or minority owner(s) from seeking paid or unpaid advice and assistance. It does mean that the minority owner currently must possess the knowledge to weigh all advice given and to make an independent determination.
8. **Ownership**, as defined by MDOT, means that:
 - a. The minority owner(s) of the firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owner(s). There shall be no restrictions through, for example, charter requirements, by-law provisions, partnership agreements, franchise or distributor agreements or any other agreements that prevent the minority owner(s), without the cooperation or vote of any non-minority, from making a business decision of the firm.
 - b. This means that the disadvantaged or minority persons, in order to acquire their ownership interests in the firm, have made real and substantial contributions of capital, expertise or other tangible personal assets derived from independently owned holdings without benefit of a transfer of assets, gift or inheritance from non-minority persons. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority persons or the mere participation as an employee rather than as a manager. If the ownership interest held by a disadvantaged or minority person is subject to formal or informal restrictions, such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the disadvantaged or minority person's ownership interest.
9. **Partnership** means an unincorporated association of two or more persons to carry on as co-owners of a business for profit. For a partnership to be deemed eligible for certification under the MDOT Program, the disadvantaged or minority person's interest must be at least 51 percent of the partnership capital.
10. **Socially and Economically Disadvantaged** means a citizen or lawfully admitted permanent resident of the United States who is socially disadvantaged and economically disadvantaged. The law establishes the level of personal net worth at \$1,500,000, increased

by the Consumer Price Index (CPI); above this net personal worth figure, an individual may not be found to be socially and economically disadvantaged. The current personal net worth figure can be found on the MDOT website at: <http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/Resources%20Information>.

11. **Sole Proprietorship**, as defined by MDOT, is a for-profit business owned and operated by a disadvantaged or minority person in his or her individual capacity. For a sole proprietorship to be deemed eligible for certification under the DBE/MBE Program, the disadvantaged or minority person must be the sole proprietor.
12. **Days** means business days unless otherwise specified. Business days are defined as Monday through and including Friday, with the exception of Nationally or State recognized holidays.

4.0 MBE GOAL SETTING PROCEDURES

1. General
 - a. The overall MBE goal and the subgoals, if appropriate, are established on a per-contract basis for the purposes of solicitation.
 - 1) Where a project consists of more than one contract, the individual contract goals and subgoals, if appropriate, should reflect the overall project goal and subgoals, if appropriate.
 - 2) The words “if appropriate” and “if applicable” throughout this document reflect the understanding that for some solicitations, no African American or Asian American subgoals should be established.
 - b. The MBE program requires that all race-neutral measures be considered before making use of race-based measures. Using a combination of race-neutral and race-based measures for each specific school construction project will help ensure that certified MBE firms are afforded the opportunity to submit bids and be utilized to the greatest extent possible.
 - 1) *Race-neutral measures* include any action taken by the LEA to make it easier for all contractors, including MBEs, to compete successfully for public school construction project contracts. These might include widespread advertising of bidding opportunities, job fairs, and similar publicity events.
 - 2) *Race-based measures* include setting an overall MBE goal and MBE subgoals, if appropriate, based upon race, gender, ethnicity, etc., for a specific contract.
2. General Considerations for Setting MBE Goal and Subgoal. The overall MBE goal and the subgoals, if appropriate, should be set for each specific project contract, considering but not limited to, the following factors:
 - a. The extent to which the work to be performed can reasonably be segmented to allow for MBEs to participate in the project contract;
 - b. A determination of the number of certified MBEs that potentially could perform the identified work;
 - c. The geographic location of the project in relationship to the identified certified MBEs;
 - d. Information obtained from other State and local departments/agencies related to establishing a MBE goal and/or subgoals for similar construction projects or work in the jurisdiction;
 - e. Information obtained from other State and local departments/agencies related to MBE participation in similar construction projects or work in the jurisdiction; and
 - f. Any other activities or information that may be identified as useful and productive.
3. MBE Subgoal Setting Procedure
 - a. Once an overall MBE participation goal is set for a project contract, each unit shall determine the appropriate contract subgoals.
 - b. If the expected value of the procurement is not equal to or in excess of \$200,000, the Subgoal process is discretionary.
 - c. All State funded public school construction is classified as Construction in the Major Industry Category schedule established by regulation.
 - 1) Accordingly, subgoals for school construction projects receiving State funding participation apply to the following Subgroups:
 - African American: 8%
 - Women-owned: 11%
 - 2) Dually certified firms are to be counted as being owned by a member of the relevant ethnic Subgroup, not as a woman-owned business.
 - d. Subgoals shall only be set when the overall goal is greater than or equal to the sum of the subgoals listed in subsection 3. of this section, plus two (2), i.e., the overall goal must be at least 21%; otherwise, no subgoals may be established for the contract.
 - e. A subgoal may not be set if the number of certified firms in the Subgroup is less than three (3).
 - f. If the Subgroup has three (3) or more certified firms available to perform the work, the Recommended Subgoal should be set at the number specified above, unless a basis is provided in the Procurement Review Group documentation for not applying the specified subgoal.
 - g. For each procurement that has an overall goal, the MBE Program Subgoal Worksheet (Appendix I) shall be completed and signed by the LEA Procurement Officer and MBE Liaison
4. The Superintendent or designee shall establish one or more procurement review groups (PRG). The PRG must include at a minimum the MBE liaison and the Procurement Officer (PO) or a representative from the procurement office. The PRG could also include a capital improvement project manager, the project architect, the cost estimator, the Construction Manager, and/or other individuals selected by the Superintendent or designee.
 - a. The PRG should communicate and/or meet as needed to consider the subcontracting goal and subgoals, if applicable, for individual projects or groups of projects.
 - b. The PRG should consider the factors cited in 4 above when establishing the MBE goal and subgoals, if applicable, for each project or segmented piece of a project that are reasonable and attainable.
 - c. The PRG must complete and submit a written analysis for each state funded school construction project with an estimated cost that is expected to exceed \$200,000.
 - 1) For state-funded projects that required review of construction documents (CD), the written analysis and the MBE

- Program Worksheet (appendix I) shall be submitted with the CD documents to the Department of General Services, and will be reviewed by the DGS for submission, appropriate signatures and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the procurement documents.
- 2) For state-funded projects that do not require review of construction documents, the written analysis and the MBE Program Worksheet shall be submitted to the PSCP, and will be reviewed for submission and appropriate signatures.
 - 3) For locally funded projects that are anticipating to be requested for state approval of planning and funding, the written analysis and the MBE Program Worksheet shall be submitted with CD documents to the MSDE, and will be reviewed for submission, appropriate signatures, and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the procurement documents. Submission of the documents is a pre-condition for recommendation for state approval of planning and funding when submitted in an annual CIP.
- d. For projects estimated to cost between \$50,000 and \$200,000 the same analysis form is to be completed and submitted. This could be a responsibility of the PRG, but could be performed by others as well.
- 1) For state-funded projects that require review of construction documents (CD), the written analysis and the MBE Program Worksheet shall be submitted with the CD documents to the DGS, and will be reviewed for submission, appropriate signatures, and correspondence between the goal and subgoals, if applicable, indicated in the analysis and those of the procurement documents.
 - 2) For state-funded projects that do not require review of construction documents, the written analysis and the MBE Program Worksheet shall be submitted to the PSCP and will be reviewed for submission and appropriate signatures.
- e. If the project cost is estimated to exceed \$200,000 then a copy of the written analysis shall also be sent to GOMA at the same time that the written analysis is submitted to the DGS or the PSCP.
- f. The PRG should consult with local counsel for the Board of Education as needed.
5. It is recognized that by utilizing the factors cited in 4 above, the MBE goal and/or subgoals, if applicable, for a specific project or portion thereof may be significantly higher than the overall goals of the program (29% overall, with 8% from African American-owned businesses and 11% from women-owned businesses). It is also recognized and possible that there will be MBE goals set that are lower than those stated above or even that no MBE goal and/or subgoals will be set for a specific project or the segmented piece of the project.
 6. Assistance in reviewing the factors cited above and setting a goal and/or subgoals, if applicable, for specific projects or a segmented piece of a project can be obtained by contacting the PSCP and/or GOMA.

5.0 IMPLEMENTING PROCEDURES - \$50,000 OR LESS

For construction projects estimated to cost \$50,000 or less, the following procedures will be utilized

1. A MBE goal and/or MBE subgoals are not required to be set for contracts that are anticipated to be for \$50,000 or less.
2. All advertisements, solicitations, and solicitation documents shall include the following statement:
 - a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation."
3. To encourage greater MBE participation the staff of the school system should send out notices of potential projects and a specific project to MBEs to solicit bids or proposals directly from minority business enterprise contractors that are certified.
4. A copy of the solicitation notice, preferably electronically, shall be sent to GOMA at the same time the advertisement for the solicitation is released.
5. When a pre-bid or pre-proposal conference or meeting is held, the MBE liaison or designated representative shall explain that all bidders or offerors are encouraged to utilize certified MBEs for this project or segments of the project.
6. Upon request for a specific project, the school system shall provide one set of drawings and specifications (and addenda when issued) to minority business enterprise associations recognized by GOMA. They will be available free of charge to be picked up at a location designated by the LEA. A review of the bid or proposal activity submitted by an association's members may be initiated to justify continuation of this service.
7. Minority Business Enterprise forms identified in Section 6.0 of this procedure for projects over \$50,000, are not required to be submitted for these projects (\$50,000 or less).
8. The names of prime contractors obtaining drawings and specifications will be shared with certified MBEs and MBE associations, upon request.
9. At the time of the contract award, the MBE Liaison or a designated person will record any anticipated certified minority business enterprise participation data made available from the successful contractor.
10. A business that presents itself as a minority business may participate in a project but may not be counted toward MBE participation until it is a certified minority business enterprise. If the MBE is not certified at the time of contract award, it may not be counted at that time. Only the funds paid after MDOT certification can be counted as MBE participation in the project. If a certified MBE failed to meet the standards specified in State Finance and Procurement Article 14-301 (G) and (I), Annotated Code of Maryland, the payments made to the MBE can be recorded and counted under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.
11. The contractor will complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16, Minority Business Enterprise Participation, with each requisition submitted for payment. If certified MBE firms are known at the time of contract award their names and other appropriate information should be entered on page 3 of the first and all subsequent requisitions for payment. Any MBEs identified during the life of the project should be added as soon as the contractor engages them after approval by the LEA.
12. Upon completion of the project the contractor will provide a summary of the total of all funds paid to certified MBE firms. This should be within the contractor's final requisition for payment. The summary shall be forwarded to the PSCP with the close-out paperwork.

6.0 IMPLEMENTING PROCEDURES - Over \$50,000

For construction projects estimated to cost in excess of \$50,000, the following procedures will be utilized:

1. All advertisements, solicitations, and solicitation documents shall include the following statements:
 - a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation notice."
 - b. "The contractor or supplier who provides materials, supplies, equipment and/or services for this construction project shall attempt to achieve the specific overall MBE goal of __ percent established for this project. All prime contractors, including certified MBE firms, when submitting bids or proposals as general or prime contractors, are required to attempt to achieve this goal from certified MBE firms."
 - c. If subgoals have been established for this project then one of the following should be included:
 - 1) "The subgoals established for this project are __ percent from African American-owned businesses and __ percent from women-owned businesses."
 - 2) "The subgoal established for this project is __ percent from African American-owned businesses."
 - 3) "The subgoal established for this project is __ percent from women-owned businesses."
 - d. "Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal."
 - e. "The bidder or offeror is required to submit with its bid or proposal a completed Attachment A – MDOT Certified MBE Utilization and Fair Solicitation Affidavit and Attachment B, MBE Participation Schedule, as described in the solicitation documents.
 - f. If there is no overall MBE goal or MBE subgoals established for the project, then only 1.A. above is to be included.
 - g. The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the provisions of the MBE program and pertinent Contract provisions.
2. Other Advertisement and Outreach Requirements
 - a. To encourage greater MBE participation the staff of the school system should send out notices of potential projects to MBEs or solicit bids or proposals directly from minority business enterprise contractors that are certified.
 - b. A copy of the solicitation notice, preferably electronically, shall be sent to GOMA at the same time the advertisement for the solicitation is released.
 - c. Upon request for a specific project, the school system shall provide one set of drawings and specifications (and addenda when issued) to minority business enterprise associations recognized by GOMA. They will be available free of charge to be picked up at a location designated by the LEA. A review of the bid or proposal activity by an association's members may be initiated to justify continuation of this service.
 - d. When a pre-bid or pre-proposal conference is held, the MBE Liaison or designated representative shall explain the MBE goal and subgoals, if applicable; the MBE provisions of the solicitation; the documentation required at the time of submission; its relationship to the responsiveness of the bidder or offeror; how to complete the required schedules, and additional information and supporting documentation that may be required after the bid or proposal opening. All contractors who attend the pre-bid or pre-proposal conference should receive a list or information explaining how to obtain a listing of certified MBE firms who could perform the work or have expressed an interest in performing the school construction work required for the specific project in the jurisdiction.
 - e. The names of prime contractors obtaining drawings and specifications will be shared with certified MBEs and MBE associations, upon request.
 - f. The MBE liaison, in conjunction with the procurement officer or project staff, should respond to all applicable questions and concerns relating to the project's MBE requirements completely and in a timely fashion to ensure that all potential contractors and subcontractors can compete effectively.
3. All Solicitation Documents Shall Include the Following:
 - a. "Certified Minority Business Enterprises are encouraged to respond to this solicitation notice". "All contractors, including certified MBE firms, when submitting bids or proposals as prime contractors are required to attempt to achieve the MBE goal and subgoals, if applicable, established for the project from certified MBEs".
 - b. "The contractor or supplier who provides materials, supplies, equipment and/or services for this construction project shall attempt to achieve the result that a minimum of __ percent of the total contract value is with certified Minority Business Enterprises, with a minimum of __ percent from certified African American-owned businesses, a minimum of __ percent from certified women-owned businesses, and the balance from any certified Minority Business Enterprises. All contractors, including certified MBE firms, when submitting bids or proposals as prime contractors, are required to attempt to achieve the MBE goal and subgoals, if applicable, from certified MBEs". Note: see 6.1.C. above for variations that may be required.
 - f. The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the provisions of the MBE program and pertinent Contract provisions.
 - c. Each bid or offer submitted, including a submittal from a certified MBE in response to this solicitation, shall be accompanied by a completed Attachment A – MDOT Certified MBE Utilization and Fair Solicitation Affidavit and Attachment B - MBE Participation Schedule.,
 - 1) Attachment A shall be submitted with the sealed bid price or proposal at a place, date, and time specified in the solicitation document.
 - 2) As an alternative, and at the discretion of the school system, Attachments B could be submitted within a maximum of 30 minutes after the due time of the bid or proposal documents. Within that time (30 minutes) each bidder or offeror must submit Attachment B, in a separate sealed envelope. The sealed price envelopes from each bidder or offeror who submits both the sealed bid or proposal and the envelope with Attachment B will then be opened and reviewed and recorded as a viable submission. Any contractor that fails to submit the second envelope, with Attachment B, prior to the specified time allowed (30 minutes) after the submittal of the sealed bid or proposal will be deemed non-responsive and the sealed bid or proposal will not be opened or considered.
 - d. The submittal of a completed and signed Attachment A – MDOT Certified MBE Utilization and Fair Solicitation Affidavit

indicates the bidder's or offeror's recognition and commitment to attempt to achieve the MBE goal and/or MBE subgoals, if applicable, for the specific project.

- 1) The bidder or offeror recognizes that their efforts made to initiate contact, to solicit, and to include MBE firms in this project will be reviewed carefully and evaluated based upon the actions taken by them prior to and up to 10 business days before the bid or proposal opening. Follow-up actions taken by the bidder or offeror within the 10 business days prior to the bid opening will also be considered.
 - 2) Based upon this review and evaluation it will be determined, by the MBE liaison, procurement officer, or a designated person, if a good faith effort was made by the apparent low bidder or apparent successful offeror.
- e. The bidder or offeror must check one of the two boxes on Attachment A, which relates to the level of MBE participation achieved for the project. The bidder's or offeror's signature indicates that in the event that they did not meet the MBE goal or subgoals, if applicable, that:
- 1) They are therefore requesting a waiver, and
 - 2) Documentation of their good faith efforts will be provided to the school system staff within 10 business days of being notified that they are the apparent low bidder or apparent successful offeror.
- f. The bidder or offeror must submit Attachment B (as and when described above), which lists and provides information related to each certified MBE firm that the bidder or offeror will utilize on this project. A completed and accurate Attachment B is required. All of the work specified to be performed by each MBE firm, MDOT certification number, minority type, and percentages must be correct.
- g. Attachment B should be completed and submitted with all calculations utilizing the base bid or offer only. A revised Attachment B should be submitted by the successful bidder or offeror once a determination is made as to the acceptance and/or rejection of any alternates.
- h. If a request for a waiver has been made, the appropriate box on Attachment A has been checked and the attachment signed, then the LEA should obtain and review the apparent low bidder's or successful offeror's supporting documentation of the good faith efforts to justify the granting of the waiver, prior to submitting the contract award for approval to the board of education.
- i. The following documentation shall be considered as part of the contract, and shall be furnished by the apparent low bidder or successful offeror to the MBE Liaison or designated person, within ten (10) business days from notification that the firm is the apparent low bidder or successful offeror:
- 1) A completed and signed Attachment B (Revised) – MBE Participation Schedule and Attachment C – Outreach Efforts Compliance Statement and Attachment D - Subcontractor Project Participation Statement . One Attachment D MBE– Subcontractor Project Participation Statement shall be completed and signed by the prime contractor and each MBE firm listed on Attachment B (Revised) – MBE Participation Schedule.
 - 2) Notification for purposes of this procedure means the earliest of the following methods of communication: orally in person, orally by telephone, orally by a telephone message, a faxed communication, a letter by date received or an electronic communication.
 - 3) The ten (10) business days do not include the day the notification is received, weekends or holidays (State or Federal), but the material submitted must be received by the close of business on the tenth day.
 - 4) The requirement to submit the above-listed documentation within the time frame specified will be considered by the IAC in its review of the request for contract award for the project. Failure to submit the required documentation within the time frame specified may result in a delay of the approval of the award of the contract, or the materials being returned without the approval of the award of the contract.
4. Waiver Procedures
- a. If the apparent low bidder or successful offeror has determined that they are unable to meet the overall MBE goal or subgoals, if applicable, for the project at the time of submission of a bid or offer, they must check the box on Attachment A indicating the request for a waiver. The signature recognizes and acknowledges that a request for a waiver is being made. The apparent low bidder or successful offeror will therefore be required to submit information and substantiating documentation that will be reviewed to justify the granting of a waiver.
- b. If the apparent low bidder or successful offeror is unable to achieve the overall MBE contract goal and/or the MBE subgoals, if applicable, from certified African American-owned businesses and/or from certified women-owned businesses, the apparent low bidder or successful offeror shall submit, within 10 business days from notification that the firm is the apparent low bidder or successful offeror, a completed Attachment C - Outreach Efforts Compliance Statement, Attachment D – Subcontractor Project Participation Statement (if applicable), Attachment E - Minority Subcontractor Unavailability Certificate, and Attachment F - MBE Waiver Documentation which shall include the following:
- 1) A detailed statement of the efforts made by the bidder or offeror to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal;
 - 2) A detailed statement of the efforts made by the bidder or offeror prior to and up to at least ten (10) business days before the bid or proposal opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed and specific instructions on how to submit a bid or proposal;
 - 3) Follow-up actions taken by the bidder or offeror within the 10 business days prior to the bid or proposal opening will also be considered.
 - 4) A detailed statement of the bidder's or offeror's efforts to make personal contact with MBE firms identified for item (2) above;
 - 5) A record of the name, address, telephone number and dates contacted for each MBE identified under items (2) and (3) above;
 - 6) A description of the information provided to MBEs regarding the drawings, specifications and the anticipated time schedule for portions of the work to be performed;
 - 7) Information on activities to assist minority business enterprises to fulfill bonding requirements or to obtain a waiver

- of these requirements;
 - 8) Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid or pre-proposal meetings or other meetings scheduled by the MBE Liaison or designated representative; and
 - 9) As to each MBE that placed a subcontract quotation or offer which the apparent low bidder or successful offeror considers not to be acceptable, a detailed statement of reasons for this conclusion.
 - c. In addition to any waiver documentation the apparent low bidder or successful offeror shall submit one completed Attachment D - Subcontractor Project Participation Statement for each MBE firm that will participate in the project consistent with the information previously provided at the time of the submission of Attachment B (Original) or the revised Attachment B (Revised), if alternates were accepted.
 - d. A waiver of an MBE contract goal or subgoal, if applicable, may be granted by the school system only upon receipt of Attachment C - Outreach Efforts Compliance Statement, Attachment D - Minority Subcontractors Unavailability Statement, and Attachment F - MBE Waiver Documentation as described above in items 1) through 9)
 - 1) The MBE Liaison will review and accept or reject the minority business enterprise material that is submitted, and may obtain legal advice or assistance from their attorney.
 - 2) The MBE waiver request may not be considered unless all of the documentation specified above has been submitted in a timely fashion by the apparent low bidder or successful offeror.
 - 3) Assistance in the review of a request for a waiver (the documentation and justifications) may be requested from the PSCP and/or GOMA.
 - 4) If a determination is made that the apparent low bidder or successful offeror did make a good faith effort, based upon a review of the documentation submitted, then the waiver must be granted. The award of contract shall then be made. The material and information submitted, including the LEA's review and analysis notes and conclusion, shall be retained in the project file.
 - 5) If a determination is made that the apparent low bidder or successful offeror did not make a good faith effort, based upon a review of the documentation submitted, then the waiver should not be granted. The material and information submitted, including the LEA's review and analysis notes and conclusion, shall be retained in the project file. The award of contract shall then be made to the next lowest bidder or offeror, who meets the contractual requirements, including the MBE requirements.
 - 6) When a waiver is requested, a copy of Attachment F - MBE Waiver Documentation, accepted and signed by a school system representative and with the reasons for the determination, shall be forwarded to GOMA and the PSCP within ten (10) business days after approval of the contract award by the board of education. Failure to submit the required documentation within the time frame specified may result in delayed approval of the award of contract by the IAC.
5. All Contracts Shall Include The Following:
- a. "The contractor shall perform the contract in accordance with the representations made in Attachment A – MDOT Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit and Attachment B – MBE Participation Schedule submitted as part of the bid or proposal".
 - b. "Failure to perform the contract as specified and presented in the bid or proposal submission without prior written consent of the owner shall constitute a violation of a material term of the contract".
 - 1) The contractor shall structure his/her operations for the performance of the contract to attempt to achieve the MBE goals as stated in the solicitation document.
 - 2) The contractor agrees to use his/her best efforts to carry out these requirements consistent with the efficient and effective performance of the contract.
 - 3) The contractor must ensure that all certified MBEs shall have the maximum practical opportunity to compete for additional subcontract work under the contract, even after the award of the contract.
 - 4) The contractor shall submit monthly to the MBE Liaison or the school system's designated representative a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
 - 5) The contractor shall include in its agreements with its certified MBE subcontractors, a requirement that those subcontractors submit monthly to the MBE Liaison or appropriate representative a report that identifies the prime contract and lists all payments received from the contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
 - 6) The contractor shall cooperate in any reviews of the contractor's procedures and practices with respect to minority business enterprises, which the MBE Liaison, the PSCP, and/or GOMA may, from time to time, conduct.
 - 7) The contractor shall maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the contractor and furnished to the MBE Liaison and or appropriate representative on request.
 - 8) All records concerning MBE participation must be retained by the contractor for a period of five years after final completion of the contract, and will be available for inspection by the MBE Liaison, representatives from the PSCP and/or other designated official entities.
 - 9) At the option of the MBE Liaison, or appropriate agency representative, upon completion of the contract and before final payment and/or release of retainage, the contractor shall submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.
 - 10) If at any time after submission of a bid or proposal and before execution of a contract, the apparent successful bidder or offeror determines that a certified MBE listed on Attachment B – MBE Participation Schedule has become or will become unavailable, then the apparent successful bidder or offeror shall immediately notify the procurement officer and provide such officer with a reason(s) why the change is requested. Any desired change

in Attachment B – MBE Participation Schedule shall be approved in advance by the procurement officer and shall indicate the contractor’s efforts to substitute another certified MBE subcontractor to perform the work. Desired changes may occur only upon written approval by the LEA.

- 11) A business that presents itself as a minority business may participate in a project but the contract value may not be counted toward the MBE goal or subgoals, if applicable, until the business is certified by MDOT. If it is not certified at the time of contract award it may not be counted toward the goal or subgoals, if applicable, at that time. Only the funds paid after MDOT certification can be counted toward meeting the MBE goal or subgoals, if applicable. If a certified MBE fails to meet the standards specified in State Finance and Procurement Article.14-301.1, Annotated Code of Maryland, the payments made to the MBE can be recorded and counted under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.
 - 12) Contractors are encouraged to seek additional MBE participation in their contracts during the life of the project. Any additional MBE participation from certified MBEs should be reported to the MBE liaison prior to initiation and should be included in subsequent monthly requisitions for payment.
 - 13) The contractor shall complete the Standard Monthly Contractor’s Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16, *Minority Business Enterprise Participation*, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBEs, and the cumulative total for the period specified. Any and all MBE firms that are identified on Attachment B should be included on page 3 of the first and all subsequent requisitions for payment. Any MBEs identified during the life of the project should be added as soon as the contractor engages them.
 - 14) At the completion of the project the contractor shall prepare a written summary of the final certified MBE participation in the contract as compared to the proposed participation at the time of contract award. This should include the name of each certified MBE, the percentage and amount that was anticipated to be paid at the time of contract award, the percentage and amount actually paid, and an explanation of any differences that have occurred. Special attention should be given to any situations where the final payments to any MBE were below the level of commitment at the time of contract award. The summary shall be forwarded to the LEA with the final requisition. The LEA shall include this documentation with the submittal of the close-out paperwork to the PSCP.
- c. Liquidated Damages – “All Contracts containing certified MBE participation goals shall contain a liquidated damages provision that applies if the contractor fails to comply with good faith with the provisions of State MBE laws or the pertinent terms of the procurement contract”.
6. Projects Utilizing a Construction Manager Delivery Method
This section of the procedure has been prepared based upon the utilization of Construction Manager Agency method of delivery. If another alternative method of project delivery is being considered, then these procedures would need to be adapted in consultation with the PSCP before proceeding.
- a. For projects that are being designed and solicited utilizing a Construction Manager Agency delivery method with multiple prime contracts, the school system can structure its procedures to attain the overall MBE goal and subgoals, if applicable, for the project as presented below:
 - b. The MBE liaison and other school system staff should work with the project’s construction manager, cost estimator, and architect, along with any other individuals who could provide assistance, to determine the overall MBE utilization strategy for the work required, appropriate bid packages, and an appropriate overall MBE goal and subgoals, if applicable, for each specific bid or proposal package.
 - c. The overall MBE goal and subgoals, if applicable, for the project shall represent the aggregate of the individual goals and subgoals, if applicable, set for each bid or proposal package.
 - d. In setting the specific goals and subgoals, if applicable, for each solicitation package consideration should be given to the potential for MBE participation to the maximum extent possible. The information and procedures provided in section 4.0 MBE Goal Setting Procedures should be consulted and followed for these types of projects.
 - e. Prior to submitting the construction documents for State review and authorization to solicit bids or proposals, the school system’s representative will prepare a complete list of the individual solicitation packages and indicate the MBE goal and subgoals, if applicable, for each solicitation package. This would include the overall MBE goal and subgoals, if applicable, established in the solicitation documents, the estimated cost for each solicitation package, and the estimated MBE dollar amounts for each solicitation package. A copy of this list should be submitted with the construction documents. The list should be retained as a record by the school system for comparison to the actual contracts awarded with MBE participation, and the final actual MBE participation at the completion of the project.
 - f. Contractors submitting bids or proposals for solicitation packages that do not include a MBE goal and subgoals, if applicable, would not be required to submit any of the MBE schedules that are otherwise required nor would they be required to indicate that they are requesting a waiver. The school system representative would, however, request information from the contractor at the completion of the project to determine if any certified MBE firms had participated in the contract.
 - g. All other submittals of MBE materials and reporting requirements are applicable for the project, including the submittal of Attachments A and B as described in section 6.0. This includes the documentation for a request for a waiver, if applicable and appropriate.
7. Projects Utilizing an Indefinite Delivery/Indefinite Quantity (IDIQ) or Job Order Contracting (JOC) Method of Delivery
- a. The solicitation should be prepared and the overall MBE goal and subgoals, if applicable, established based upon the type of work that is anticipated to be specified or performed under the contract and the availability of certified MBEs. This could include an analysis of the percentages of the different types of work, the estimated dollar value in the entire contract, and the availability of MBEs.
 - b. If an overall goal and subgoals, if applicable, are set the bidders or offerors would be required to submit Attachment A –

- MDOT Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit in which they could indicate their anticipated MBE participation based upon the entire contract amount and the types of work specified. The award of contract can be made based upon their estimate of MBE participation since there is no specific task order or description of work to be performed and subcontractors have not been identified or engaged through any type of commitment or subcontract.
- c. Since MBE participation is only anticipated in a general sense as an objective and specific contracts to MBEs have not been signed, then the contract award would not be included in any reporting to the PSCP or subsequent reporting to GOMA.
 - d. However, as the contract proceeds and individual task orders and/or purchase orders are issued, the contractor should submit Attachment B – MBE Participation Schedule for any and all projects or work where MBE subcontractors and/or suppliers might reasonably be utilized. Discussions between the contractor or offeror and the LEA as the task orders and/or purchase orders are being developed should address this aspect of the contract requirements.
 - e. Any MBE participation should be recorded by the MBE liaison and reported to the PSCP as the task orders and/or purchase orders are approved.
 - f. The contractor shall complete the Standard Monthly Contractor’s Requisition for Payment (IAC/PSCP FORM 306.4), specifically page 3 of 16, *Minority Business Enterprise Participation*, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBE S, and the cumulative total for the period specified. Any and all MBE firms that are identified on Attachment B – MBE Participation Schedule should be included on page 3 of the first and all subsequent requisitions for payment. Any MBEs identified during the life of the project should be added as soon as the contractor engages them.
 - g. At the completion of the contract period or the full utilization of the contract’s value a report should be prepared by the LEA MBE Liaison and submitted to the PSCP summarizing the MBE participation in each and all of the task orders or purchase orders issued under the contract. This should include the anticipated MBE participation prior to the issuance of the solicitation, the MBE participation anticipated at the time of contract award and the actual MBE participation at the completion of the contract. The summary shall be forwarded to the LEA with the final requisition. The LEA shall include this documentation with the submittal of the close-out paperwork to the PSCP.
8. Projects Utilizing the Design/Build Delivery Method
- a. The solicitation is for both A/E services and the actual construction of a public school project. The solicitation should be prepared and the MBE goal and subgoals, if applicable, established for the construction work that is anticipated for the project. The goal setting procedures described in Section 4.0 above should be utilized for these types of projects.
 - b. The bidders or offerors should be required to submit Attachment A – MDOT Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit on which they would indicate their anticipated MBE participation based upon the construction work anticipated and their understanding of the MBE goal and subgoals, if applicable, the types of work involved, and the availability of certified MBEs for the project. Since there are no detailed plans or designs for the project and there are no contracts or subcontracts for the actual construction work there is no need to submit any other MBE schedules, at this time.
 - c. If the bidder, or offeror, who is to be awarded this contract has indicated that they do not anticipate achieving the overall MBE participation goal and subgoals, if applicable, for this project on Attachment A, then they are in effect requesting a waiver. They will be required to submit documentation at a later date to justify this request.
 - d. As the project proceeds through the design phase and the project is nearing the completion of the construction documents for submission to the State to review, the Design/Build Team (team) in consultation with LEA representatives should discuss the opportunities and potential for certified MBEs to participate in the project.
 - e. The team should begin to identify potential contractors and subcontractors, opportunities to segment the project, and MBEs that could participate in the project.
 - f. At a point in time that is approximately 30 days prior to the anticipated CD submission to the State; the team should complete and submit a revised Attachment B – MBE Participation Schedule to the LEA for their review and approval.
 - g. If the team had indicated on the Attachment A – MDOT Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit that they would meet the goals and the information on the revised Attachment B indicates that they did meet the goals then the team should proceed with the construction of the project.
 - h. If the team had indicated on the Attachment A that they did not anticipate meeting the overall MBE goal and subgoals, if applicable, or only a portion of the goal and subgoals, if applicable, then Attachment B – MBE Participation Schedule, Attachment C - Outreach Efforts Compliance Statement, Attachment E - Minority Subcontractors Unavailability Certificate, and Attachment F - MBE Waiver Documentation should be requested by the LEA. The team should, at this time, submit their documentation in support of the waiver requested.
 - i. The proposed MBE participation should be reviewed and a determination made as to whether the team has made a good faith effort to meet the MBE goals and subgoals, if applicable, established for the project and as stated on the Attachment A.
 - j. If a request for a waiver is made and approved, Attachment F - MBE Waiver Documentation should be signed by a school system representative and submitted to the PSCP and GOMA.
 - k. Since there was no MBE participation reported at the time of the award of the Design/Build contract, the LEA would submit the entire package of information, including all of the MBE related attachments to the PSCP within ten (10) days of the team being directed to proceed with the actual construction work.
 - l. All other submittals of MBE materials and reporting requirements are applicable for the project, as described above in Section 5.0.

7.0 RECORDS AND REPORTS

1. The MBE Liaison shall maintain such records as are necessary to confirm compliance with its Minority Business Enterprise Procedures and activities. The records shall be maintained until the project is audited by the PSCP. These records shall include by project:

- a. The contractor report submitted at the completion of the project;
 - b. The identity of the minority contractors employed on the project;
 - c. The type of work performed;
 - d. The actual dollar value of the work, services, supplies or equipment; and
 - e. The MBE percentage of the total contract.
2. The MBE Liaison will maintain a record of all waivers approved for each project or solicitation package where the prime contractor was unable to achieve the established overall goal or subgoals, if applicable. The MBE Liaison will, however, report to the PSCP all MBE participation by MDOT certified firms who are prime contractors, subcontractors, suppliers, or otherwise making an economically viable contribution to each project. This information shall be reported to PSCP within ten (10) days after approval of the award of the contract by the board of education.
 3. The LEA shall submit the “Certified Minority Business Enterprise Participation Standard Monthly Contractor’s Requisition for Payment” (IAC/PSCP Form 306.4 page 3 of 16, located in the Administrative Procedures Guide), to the PSCP Director of Fiscal Services as part of the regular monthly request for payment for the project.
 4. The LEA shall submit the “Close-Out Cost Summary” (IAC/PSCP Form 306.6 located in the Administrative Procedures Guide), along with the “Certified Minority Business Enterprise Participation Standard Monthly Contractor’s Requisition for Payment” (IAC/PSCP Form 306.4) to the PSCP Director of Fiscal Services within 180 days of completion of the project.
 - a. All final MBE payments should be verified by the LEA MBE Liaison before submission to the PSCP.
 5. Each quarter and at the end of each fiscal year end, the LEA will submit to the, PSCP Fiscal Services the monthly cumulative “Minority Business Enterprises Monthly Procurement Report GOMA MBE Forms 1 & 2” and maintain such records as are necessary to confirm compliance with its minority business enterprise procedures and activities.
 6. Each fiscal year end, PSCP Fiscal Services will create an annual report “Minority Business Enterprises Monthly Procurement Report GOMA MBE Forms 1 & 2” and Reporting Form #3 – Annual MBE Procurement Report Database – providing an accounting of payments made to MBE prime and MBE subcontractors. The LEA shall maintain such records as are necessary to confirm compliance with its Minority Business Enterprise Procedures and activities. These reports will compare the overall MBE goal and subgoals, if applicable, for each specific project with the MBE participation anticipated at the time of contract award and the actual MBE participation at the completion of the project.

8.0 MONITORING

1. The LEA’s procurement personnel or project staff shall verify that the certified MBE’s listed in the MBE participation schedule are actually performing the work.
2. The LEA’s procurement personnel or project staff shall ensure that MBE subcontractors are receiving compensation as set forth in MBE participation schedule by ensuring that the contractor submits monthly reports, listing any unpaid invoices over 30 days old received from any certified MBE subcontractor, the amount of each invoice, and the reason payment has not been made.
3. PSCP Fiscal Services will:
 - a. Compile data on projects completed during the fiscal year;
 - b. Confirm that all MBE subcontractors listed in Attachment B have received payment; and
 - c. Maintain such records as are necessary to confirm compliance with its Minority Business Enterprise Procedures and activities.
3. The MBE Liaison and/or the PSCP will conduct reviews as deemed necessary to confirm compliance with the minority business enterprise participation requirements.
4. The MBE Liaison will maintain appropriate records, and shall assist the PSCP in on-site or post-audit reviews upon request.
5. Auditors from the PSCP will have access to and the ability to audit MBE participation for specific projects, information retained by the LEA, and/or submitted to the IAC in reports/forms filed by the LEA as referenced above.

9.0 MINORITY BUSINESS ENTERPRISE LIAISON

1. The Superintendent shall designate an individual to be identified as the MBE Liaison for the school system.
2. The MBE Liaison will be the contact person who will work with the PSCP and GOMA to implement the Minority Business Enterprise Program for the school system and the State of Maryland.
3. The Superintendent will immediately notify the PSCP if there is a change in the MBE Liaison for the school system.

MBE SUPPLEMENTAL INFORMATION DATED 12/1/17

General

1. 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.
2. 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.

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.

1. 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.
2. 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.
3. 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.
4. 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.

5. 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

New Guidelines Regarding MBE Participation and Attachment B Revision

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.

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.

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.

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.

PROJECT:

2026-34

PSC#:

L21F013

Attachment A (page 1 of 2)

CERTIFIED MINORITY BUSINESS ENTERPRISE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

NOTE: You must include this document with your bid or offer. If you do not submit the form with your bid or offer, the procurement officer shall deem your bid non-responsive or your offer not reasonably susceptible of being selected for award.

* * * * *

Part I.

I acknowledge the:

- Overall certified MBE subcontract participation goal of 2 %.
- The subgoals, if applicable, of:
 - 0 % for certified African American-owned businesses and
 - 0 % for certified Women-owned businesses.

I have made a good-faith effort to achieve this goal. If awarded the contract, I will continue to attempt to increase MBE participation during the project.

Part II.

Check ONE Box

NOTE: FAILURE TO CHECK ONE OF BOXES 1, 2, or 3 BELOW WILL RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

NOTE: INCONSISTENCY BETWEEN THE ASSERTIONS ON THIS FORM AND THE INFORMATION PROVIDED ON THE *MBE PARTICIPATION SCHEDULE* (ATTACHMENT B) MAY RENDER A BID NON-RESPONSIVE OR AN OFFER NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD

1 I have met the overall MBE goal and MBE subgoals for this project. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details how I will reach that goal.

or

2 After having made a good-faith effort to achieve the overall MBE goal and MBE subgoals for this project, I can achieve partial success only. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B], which details the MBE participation I have achieved.

I request a partial waiver as follows:

- Waiver of overall MBE subcontract participation goal: _____ %
- Waiver of MBE subcontract participation subgoals, if applicable:
 - _____ % for certified African American-owned businesses and
 - _____ % for certified Women-owned businesses.

Within 10 days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

or

- 3 After having made a good faith effort to achieve the overall MBE goal and MBE subgoals for this project, I am unable to achieve any portion of the goal or subgoals. I submit with this Affidavit [Attachment A] the *MBE Participation Schedule* [Attachment B].

I request a full waiver.

Within 10 days of being informed that I am the apparent awardee, I will submit *MBE Waiver Documentation* [Attachment F] (with supporting documentation).

Part III.

I understand that if I am the apparent awardee or conditional awardee, I must submit **within 10 working days** after receiving notice of the potential award or within 10 days after the date of conditional award – whichever is earlier – the:

- *Outreach Efforts Compliance Statement* (Attachment C)
- *Subcontractor Project Participation Statement* (Attachment D)
- *Minority Subcontractors Unavailability Certificate* (Attachment E) (if applicable)
- Any other documentation the Procurement Officer requires to ascertain my responsibility in connection with the MBE participation goal and subgoals

I acknowledge that if I fail to timely return complete documents, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has been awarded, the award is voidable.

I acknowledge that the MBE subcontractors/suppliers listed in the *MBE Participation Schedule* and any additional MBE subcontractor/suppliers identified in the *Subcontractor Project Participation Statement* will be used to accomplish the percentage of MBE participation that I intend to achieve.

In the solicitation of subcontract quotations or offers, MBE subcontractors were provided the same information and amount of time to respond as were non-MBE subcontractors.

The solicitation process was conducted in such a manner so as to not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

I solemnly affirm under the penalties of perjury that this Affidavit is true to the best of my knowledge, information, and belief.

Bidder/Offeror Name

Address

Address (continued)

Affiant Signature

Printed Name & Title

Date

**ATTACHMENT B
MBE PARTICIPATION SCHEDULE**

REVISED

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

1. Prime Contractor's Name		2. Prime Contractor's Address/Telephone Number		
3. Project/School Name Boyd J. Michael, III Technical High School		4. Project/School Location 50 W. Oak Ridge Drive Hagerstown, MD 21740		
5. LEA Name	Washington County Public Schools	6. Base Bid Amount	\$	
PSCP #	L21F013	Alternates	\$	
		Total	\$	
7a. Minority Firm Name		Telephone Number		
Minority Firm Address		NAICS Code		
MDOT Firm Certification #				
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input type="checkbox"/> MDOT Certified Firm	100%	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	% \$	\$	\$
7b. Minority Firm Name		Telephone Number		
Minority Firm Address		NAICS Code		
MDOT Firm Certification #				
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input type="checkbox"/> MDOT Certified Firm	100%	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	% \$	\$	\$
7c. Minority Firm Name		Telephone Number		
Minority Firm Address		NAICS Code		
MDOT Firm Certification #				
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input type="checkbox"/> MDOT Certified Firm	100%	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	% \$	\$	\$
<input type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	% \$	\$	\$
8. MBE Total Amount: \$		9. Total MBE Percentage of Entire Contract: %		
10. Form Prepared by:		11. Reviewed and accepted by LEA MBE Liaison		
Name: _____		Name: _____		
Title: _____		Title: _____		
Date: _____		Date: _____		

Total MBE Participation:	\$			%
Total African American Participation:	\$			%
Total Asian American Participation:	\$			%
Total Other Participation:	\$			%

EXAMPLE: 22% Goal

Subgoals: African American - 7%
Asian American - 4%

**ATTACHMENT B
MBE PARTICIPATION SCHEDULE**

REVISED

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

1. Prime Contractor's Name ABCD, Inc.		2. Prime Contractor's Address/Telephone Number 100 Main St, Anytown, Anystate (111)-222-3333		
3. Project/School Name Anytown High School		4. Project/School Location 200 School Drive, Anytown, Anystate		
5. LEA Name Washington County Public Schools	PSCP # 21.XXX.XX	6. Base Bid Amount	\$ 1,000,000	
		Alternates		
		Total	\$ 1,000,000	
7a. Minority Firm Name ABCD, Inc.	Minority Firm Address Prime Contractor, see above		Telephone Number	(111)-222-3333
MDOT Firm Certification #		NAICS Code		
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input checked="" type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input type="checkbox"/> MDOT Certified Firm	100%	%	\$	\$
<input checked="" type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	11%	\$ 110,000	\$ 110,000
<input type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	%	\$	\$
7b. Minority Firm Name MBE 1	Minority Firm Address 100 Elm St, Anytown, Anystate		Telephone Number	(111)-222-4444
MDOT Firm Certification #		NAICS Code		
<input type="checkbox"/> African American <input checked="" type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input type="checkbox"/> MDOT Certified Firm	100%	%	\$	\$
<input type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	%	\$	\$
<input checked="" type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	4%	\$ 66,667	\$ 40,000
7c. Minority Firm Name MBE 2	Minority Firm Address 100 Maple St, Anytown, Anystate		Telephone Number	(111)-222-5555
MDOT Firm Certification #		NAICS Code		
<input checked="" type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women <input type="checkbox"/> Hispanic <input type="checkbox"/> Disabled				
Subcontractor Firm (Select One)	Allowable Percentage	Percentage of Total Contract	Subcontractor Dollar Amount	Participation Amount
<input checked="" type="checkbox"/> MDOT Certified Firm	100%	7%	\$ 70,000	\$ 70,000
<input type="checkbox"/> MDOT Certified Prime Contractor	50% of established goal OR 100% of one subgroup contract subgoal	%	\$	\$
<input type="checkbox"/> MDOT Certified Supplier, Wholesaler and Regular Dealer	60%	%	\$	\$
8. MBE Total Amount:		\$ 220,000	9. Total MBE Percentage of Entire Contract: 22 %	
10. Form Prepared by:		11. Reviewed and accepted by LEA MBE Liaison		
Name:	John Smith	Name:		
Title:	President, ABCD, Inc.	Title:		
Date:		Date:		

Total MBE Participation:	\$ 220,000	22%
Total African American Participation:	\$ 70,000	7%
Total Asian American Participation:	\$ 40,000	4%
Total Other Participation:	\$ 110,000	11%

Attachment C

OUTREACH EFFORTS COMPLIANCE STATEMENT

In conjunction with the bid or offer submitted in response to _____ County Public Schools for the _____ project, PSC # _____, I state the following:
(name)

- 1) Bidder/Offeror identified opportunities to subcontract in these specific work categories:

- 2) Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.

- 3) Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

- 4) Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding Requirements (Described Efforts)
 This project does not involve bonding requirements.

- 5) Bidder/Offeror did/did not attend the pre-bid conference
 No pre-bid conference was held.

Bidder/Offeror Name

By: _____

Address

Name

Signature, Title

Date

Attachment D

MINORITY BUSINESS ENTERPRISES SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT

PROJECT/ SCHOOL NAME: _____

PROJECT/ SCHOOL LOCATION: _____

LEA: _____

NAME OF PRIME CONTRACTOR: _____

NAME OF MBE SUBCONTRACTOR: _____

MDOT Certification Number

1. Work/Services to be performed by MBE Subcontractor: _____

2. Subcontract Amount: \$ _____

3. Bonds - Amount and type required of Subcontractor if any: _____

4. MBE Anticipated or Actual Commencement Date: _____ Completion Date: _____

5. This MBE subcontract represents the following percentage of the total contract cost: _____

6. This is an African American Firm: Yes _____ No _____

7. This is a Women Owned Business Firm: Yes _____ No _____

8. This is an Asian, American Indian, Hispanic or Disabled Firm: Yes _____ No _____

(Circle One)

The undersigned subcontractor and prime contractor will enter into a contract for the work/service indicated above upon the prime contractor's execution of a contract for the above referenced project with the Board of Education. The undersigned subcontractor is a MDOT certified Minority Business Enterprise. The terms and conditions stated above are consistent with our agreements.

Signature of Subcontractor: _____

Date: _____

The term and conditions stated above are consistent with our agreements.

Signature of Prime Contractor: _____

Date: _____

Attachment E

MINORITY 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 the _____ school project
in _____ County by _____
(Name of Prime Contractor's Firm)

2. The _____ (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 Date

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.

Signature of Prime Contractor Title Date

Attachment F

MBE WAIVER DOCUMENTATION

Project Name: _____ **PSC No.** _____

Base Contract Amount \$ _____

Plus Accepted Alternates _____

Equals Total Contract Amount \$ _____

I have previously requested that a waiver be granted to the overall MBE goal for this project of ____ percent, with a minimum of ____ percent from certified African American-owned businesses, a minimum of ____ percent from certified women-owned businesses, and the balance from all certified minority business enterprises, if applicable. This would include the total dollar value of all materials, supplies, equipment, and services, including construction services directly or indirectly, from Minority Business Enterprises (MBE) which are currently certified by the Maryland Department of Transportation (MDOT).

I _____, hereby certify that my position is

 (Name of Company Representative)

_____, and I am the duly authorized representative of

 (Position Title)

 (Company Name)

I further certify that I have submitted a *Schedule for Participation of Certified Minority Business Enterprises* which reflects the percentage and dollar value of certified Minority Business Enterprise participation which my company expects to achieve for this contract. Therefore, the request for the waiver is as follows:

Summary MBE Participation Schedule from Attachment B

Minority Group	MBE GOAL		Actual MBE Dollar Participation		Request For Waiver	
	Percent of Total Contract	Dollar Value of Total Contract*	Dollar Value	Percent of Total Contract	Dollar Value	Percent of Total Contract
a. Sub Goal African American						
b. Sub Goal Women						
c. Sub Goal Asian American						
d. Other * in Sub Goal group a/b above						
TOTALS						

* with accepted/rejected alternates

To support this request for a waiver, I include the following information as attachments which I certify to be true to the best of my knowledge.

1. A detailed statement of the efforts made by the contractor to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal;
2. A detailed statement of the efforts made by the contractor prior to and up to 10 days before the bid opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed, and specific instructions on how to submit a bid;
3. A detailed statement of the contractor's efforts to make personal contact with MBE firms identified for Item 2. above;
4. A record of the name, address, telephone number, and dates contacted for each MBE identified under items 2. and 3. above;
5. A description of the information provided to MBE's regarding the plans, specifications and the anticipated time schedule for portions of the work to be performed;
6. Information on activities to assist minority business enterprises to fulfill bonding requirements, or to obtain a waiver of these requirements;
7. Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid meetings, or other meetings scheduled by the MBE Liaison or designated representative;
8. As to each MBE that placed a subcontract quotation or offer which the apparent low bidder or successful offeror considers not to be acceptable, a detailed statement of reasons for this conclusion; and
9. A list of minority subcontractors found to be unavailable. This shall be accompanied by a Minority Subcontractor Unavailability Certificate signed by the minority business enterprise or from the apparent low bidder or successful offeror indicating that the minority business did not provide the written certification.

Signature _____ Date _____
 (Company Representative Name)

Sworn and subscribed before me this _____ day.

of _____ in the year _____ Notary Public _____

Reviewed and accepted by the _____ County Board of Education MBE
 Liaison.
 (County Name)

Signature _____ Date _____
 (County Representative Name)

**CERTIFIED MINORITY BUSINESS ENTERPRISE PARTICIPATION
STANDARD MONTHLY CONTRACTOR'S REQUISITION FOR PAYMENT**

Instructions for Completion of IAC/PSCP Form 306.4 Page 3

THIS FORM TO BE COMPLETED BY PRIME CONTRACTOR ONLY

1. **LEA** – Enter full name of LEA.
2. **Facility Name** – Enter full name of school/facility.
3. **Scope of Work** – Enter type of work being performed (i.e. New, Renovation, Roof, HVAC, ASP – Flooring, QZAB – Media Center, etc.).
4. **Date** – Date of Requisition.
5. **PSC NO** – Enter full PSC Number as assigned by PSCP.
6. **REQ NO** – Enter the number of the corresponding Requisition for Payment.
7. **Name of MBE Sub-Contractor** – Enter full name of MBE Sub-Contractor.
8. **MDOT Certification Number & Classification** – Enter the 5 digit MDOT Certification number and corresponding MDOT Classification for each MBE Sub-Contractor. MDOT Classifications and the MDOT website are listed at the bottom of this form.
9. **TOTAL MBE Contract Amount** – Enter ORIGINAL Total MBE Contract Amount as stated on MBE Attachments B and D. This amount should NOT be altered with change order amounts, changes to scope of work, etc. which may affect contract amount.
10. **Amount to be Paid This Requisition** – Enter the amount to be paid to the MBE Sub-Contractor for work applicable to this requisition.
11. **TOTAL Paid to Date** – Enter the TOTAL amount paid to date to the MBE Sub-Contractor – this amount should NOT include the amount being paid on this requisition, only the total of prior payments.
12. **MBE has Received FINAL Payment** – Enter “YES” if the MBE Sub-Contractor has been paid in full. Enter “NO” if the MBE Sub-Contractor has NOT been paid in full.
13. **If amount paid is LESS than TOTAL MBE Contract Amount, EXPLAIN VARIANCE** – Enter a brief reason for the MBE Sub-Contractor NOT being paid equal to or greater than the ORIGINAL Total MBE Contract Amount as stated on this form and MBE Attachments B & D. Additional documentation may be required to be submitted for variance explanations.
14. **Name of Contractor Firm** – Enter full name of Prime Contractor.
15. **Authorized Contractor Signature/Date** – The authorized individual employed by the Prime Contractor who filled this form out should date and sign here.
16. **Contractor Federal Tax ID #** – Enter the Federal Tax ID Number of the Prime Contractor.
17. **Contractor MBE Classification #** - Enter the MDOT MBE Classification Number if the Prime Contractor is a MDOT certified MBE Company.
18. **Name of LEA MBE Liaison** – PRINT the name of the LEA MBE Liaison (or other LEA authorized employee) responsible for VERIFYING ALL INFORMATION filled out by the Prime Contractor on this form.
19. **Signature of LEA MBE Liaison/Date** – Signature of the person VERIFYING ALL INFORMATION filled out by the Prime Contractor on this form (signature of person stated in Step #18.)

Public School Construction Program
MBE Document Submission Requirements

Procedures for Request for Payment/Reimbursement for ALL PSCP Funded Programs

1. Use IAC/PSCP Form 306.4 Page 3.
2. The Prime Contractor must complete this Form and submit it with each Monthly Requisition/Invoice for Payment for each project in which they are seeking payment from either the Local Education Agency (LEA) or State of Maryland Public School Construction Program. If no MBE Sub-Contractors were utilized on a project (i.e., no MBE goals were set for the project and/or a full waiver was granted), this Form must still be submitted by the Prime Contractor.
 - a. IAC/PSCP Form 306.4 Page 3 must be PROJECT specific – If one bid/contract covers multiple projects (either different schools or scopes of work), this Form must be calculated and submitted by the Prime Contractor on an individual project basis.
 - b. IAC/PSCP Form 306.4 Page 3 must be Prime Contractor/Trade Package specific – If the IAC recognized multiple Prime Contractors and/or Trade Packages, this Form must be completed by each Prime/Trade Contractor recognized by the IAC and submitted.
3. All ORIGINAL MBE Sub-Contractors must be listed on this Form with their full company name, MDOT Certification Number, MDOT Classification and ORIGINAL Contract Amount as stated on MBE Attachments B & D. (ONLY MDOT Certified companies should be listed on this Form.)
4. Any additional MBE Sub-Contractors utilized on a project must be listed on this Form with their full company name, MDOT Certification Number, MDOT Classification and total contract amount. (ONLY MDOT Certified companies should be listed on this Form.)
5. The Prime Contractor should fill in the amount they intend to pay each MBE Sub-Contractor for the current requisition as well as all money paid to date. By signing this Form, the Prime Contractor is certifying their intent to pay the “Amount to be Paid This Requisition”. They are also certifying the distribution of money listed under the “Total Paid to Date” column.
6. The LEA MBE Liaison shall verify each month with the MBE Sub-Contractors that all money listed under the “Total Paid to Date” column has been received from the Prime Contractor. By signing this Form, the LEA MBE Liaison is certifying all MBE Sub-Contractors have been paid all money due to them by the Prime Contractor.
7. The MBE Liaison should also be comparing the current Form with the prior month(s) to make sure information is not being duplicated and/or repeated. Payments to MBE Sub-Contractors should be progressive and recorded.
8. If for any reason, an amount the Prime Contractor listed on the Form as intending to pay the MBE Sub-Contractor was not made, or if the payment amount changed, the LEA MBE Liaison should be inquiring about the change in payment or non-payment to the MBE Sub-Contractor.
9. NO REQUESTS FOR PAYMENT/REIMBURSEMENT SHOULD BE SUBMITTED TO PSCP UNTIL THE PROCEDURES ABOVE HAVE BEEN COMPLETED.

Public School Construction Program
MBE Document Submission Requirements

Procedures for Close-Out Summary Submission

1. Use IAC/PSCP Form 306.4 Page 3.
2. The Prime Contractor must complete this Form and submit it with the FINAL Requisition to the LEA or upon LEA request. If no MBE Sub-Contractors were utilized on a project (i.e. no MBE goals were set for the project and/or a full waiver was granted), this Form must still be submitted by the Prime Contractor.
 - a. IAC/PSCP Form 306.4 Page 3 must be PROJECT specific – If one bid/contract covers multiple projects (either different schools or scopes of work), this Form must be calculated and submitted by the Prime Contractor on an individual project basis.
 - b. IAC/PSCP Form 306.4 Page 3 must be Prime Contractor/Trade Package specific – If the IAC recognized multiple Prime Contractors and/or Trade Packages, this Form must be completed by each Prime/Trade Contractor recognized by the IAC and submitted.
3. All ORIGINAL MBE Sub-Contractors must be listed on this Form with their full company name, MDOT Certification Number, MDOT Classification and ORIGINAL Contract Amount as stated on MBE Attachments B & D. (ONLY MDOT Certified companies should be listed on this Form.)
4. Any additional MBE Sub-Contractors utilized on a project must be listed on this Form with their full company name, MDOT Certification Number, MDOT Classification and total contract amount. (ONLY MDOT Certified companies should be listed on this Form.)
5. The Final Form 306.4 should reflect ALL money paid to each MBE Sub-Contractor. There is a column on the Form to answer “Yes” or “No” for the MBE Sub-Contractor being paid in full. There is also a column on the Form for the Prime Contractor to state a brief reason if a MBE Sub-Contractor was paid less than the original contract amount stated on MBE Attachments B & D. By signing this Form, the Prime Contractor is certifying the MBE Sub-Contractors have been paid in full for this project.
6. The LEA MBE Liaison shall verify with the MBE Sub-Contractors that all money listed under the “Total Paid to Date” column has been received and no additional money is owed to them by the Prime Contractor. By signing this Form, the LEA MBE Liaison is certifying all MBE Sub-Contractors have been paid in full by the Prime Contractor for this project.
7. NO CLOSE-OUT SUMMARY SHOULD BE SUBMITTED TO PSCP UNTIL THE ABOVE PROCEDURES HAVE BEEN COMPLETED.

Additional Submission Requirements Applicable to All State Funded Projects

1. If an ORIGINAL MBE Sub-Contractor listed on MBE Attachments B and D is not paid in full and/or not utilized on a project, the Prime Contractor shall submit in writing an explanation for either the reduction in contract amount/payment or why the MBE Sub-Contractor was not utilized.
2. It is the responsibility of the LEA MBE Liaison to contact the MBE Sub-Contractor to verify the explanation provided by the Prime Contractor. Any correspondence between the LEA MBE Liaison and both the Prime Contractor and MBE Sub-Contractors should be kept by the LEA and be made available to PSCP upon request or audit.
3. If an MBE Sub-Contractor originally listed on MBE Attachment B & D becomes unavailable and/or is not going to be utilized, this information should be communicated to the PSCP MBE Program Manager and the PSCP Finance Department by the LEA immediately.
4. If additional MBE Sub-Contractors are hired after the MBE Attachments B & D have been submitted to PSCP, the LEA MBE Liaison must submit this information to the PSCP MBE Program Manager and the PSCP Finance Department immediately.

Attachment H

IAC/PSCP FORM 306.6

CLOSE-OUT COST SUMMARY

LEA: _____

DATE: _____

SCHOOL NAME: _____

PSC # : _____

	<u>Public School Construction</u>			<u>Local and Other</u>		
Allocation:	_____			_____		
Cash Disbursements:	_____			_____		
	Approved Contracts	Expenditures	Balance	Approved Contracts	Expenditures	Total Expenditures
Construction			\$0			.
A/E			\$0			\$0
Related Costs			\$0			\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

I hereby certify that the data shown hereon is correct and request this project be closed.

Signature of LEA Representative

FOR STATE USE ONLY

ADJUSTMENTS:

Allocation: _____

Cash: _____

Initials	
Date	

AUDIT COMMENTS:

Initials	
Date	

AIA A310-2010 Bid Bond Form



AIA[®]

Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Board of Education of Washington County
10435 Downsview Pike
Hagerstown, MD 21740

BOND AMOUNT: \$ 5% of the total bid

PROJECT:

(Name, location or address, and Project number, if any)

Bid Number from Invitation to Bid
Project Description
Location Name
Location Address
Location City, State, Zip

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding ninety (90) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond ninety (90) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

Init.

furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this day of ,

(Witness)

(Witness)

(Contractor as Principal)

(Seal)

(Title)

(Surety)

(Seal)

(Title)

**AIA A101-2017 Standard Form of Agreement between Owner
& Contractor, as Amended by Washington County Board of
Education**

 **AIA**® Document A101® – 2017**Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740

and the Contractor:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

RFP 2026-34 Design Build Elevator Modernization
Boyd J. Michael, III Technical High School
50 West Oak Ridge Drive
Hagerstown, MD 21740

The Architect:
(Name, legal status, address and other information)

The Owner will serve as the Architect for this project.
Any reference to Architect shall be interpreted as the Owner.

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The date of this agreement serves as the date of commencement for planning, scheduling, submittals, and ordering, acquiring, and storing material necessary to perform the work.

The date of commencement of onsite, physical work will be June 22, 2026.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall

achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

- Not later than () calendar days from the date of commencement of the Work.
- By the following date: August 14, 2026 (Use/Occupancy Approved)

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.4 Final Completion

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

- Not later than « » (« ») calendar days from the date of commencement of the Work.
- By the following date: August 21, 2026

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Liquidated damages in the amount One Thousand Dollars and no cents (\$1,000.00) per calendar day to apply and shall be assessed against the contractor for delay to Substantial Completion.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction as modified by the Owner, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 General Conditions of the contract for Construction as modified by the

- Owner;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
 - .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner; and
 - .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%).

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor in accordance with Article 9 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than sixty (60) days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest – Paragraph deleted in its entirety.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner
- Litigation under the laws of the State of Maryland or where the project is located.
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation under the laws of the State of Maryland or where the project is located.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner.

§ 7.1.1 Deleted paragraph.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 General Conditions of the Contract for Construction as modified by the Owner.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as modified by the Owner and included in the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Robert H. Rollins, III – Director Facilities
Washington County Public Schools

10435 Downsville Pike
Hagerstown, MD 21740

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Article 11 of AIA Document A201 General Conditions of the Contract for Construction, as modified by the Owner, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Article 11 of AIA Document A201 General Conditions of the Contract for Construction as modified by the Owner, and elsewhere in the Contract Documents.

§ 8.5.3 Certificate of Insurance: Prior to proceeding with the work, the contractor agrees to provide a Certificate of Insurance with the application coverage as listed in the Specifications:

List Certificate Holder and Additional Insured as:
Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740

List the Project as:

Bid #: RFP 2026-34

Project Name Design/Build Elevator Modernization at Boyd J. Michael III, Technical High School

§ 8.6 Paragraph Deleted.

§ 8.7 OTHER PROVISIONS:

Liquidated Damages

This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and contract provisions. The Owner and the Contractor acknowledge and agree that the Owner will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the Owner might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the Owner that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the Owner at the rates set forth below. The Contractor expressly agrees that the Owner may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that

for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the Owner is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$ 52.00 per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ 52.00 per MBE subcontractor.
- 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 subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor'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.

Notwithstanding the use of liquidated damages, the Owner reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law. »

§ 8.7.1 The Owner will serve as the Architect for this project. The Owner's Representative shall perform all functions, and responsibilities of the Architect during the Scope of this Work.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction as modified by the Owner.
- .3 Exhibit A Bid #_____ –Specifications Dated _____ # Pages
- .4 Exhibit B Bid #_____ – Drawings Dated _____ # Pages
- .5 Exhibit C.1 Bid #_____ – Addendum 1 Dated _____ # Page(s)
- .6 Exhibit C.2 Bid #_____ – Addendum 2 Dated _____ # Page(s)
- .7 Exhibit C.3 Bid #_____ – Addendum 3 Dated _____ # Page(s)
- .8 Exhibit C.4 Bid #_____ – Addendum 4 Dated _____ # Page(s)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

This Agreement is entered into as of the day and year first written above. The fully executed original document will be retained by the Owner, with the Contractor and Architect each receiving an electronic copy.

OWNER *(Signature)*

BY: Dr. David T. Sovine, Superintendent

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)



Contract Affidavit

WASHINGTON COUNTY PUBLIC SCHOOLS
10435 Downsville Pike, Hagerstown, Maryland 21740

CONTRACT AFFIDAVIT

MANDATORY CONTRACT ADDENDUM

COMAR 21.07.01.25

Bidder shall complete and submit this contract affidavit to the Purchasing Department of Washington County Public Schools to attach with the contract form.

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit.

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 items): Corporation: ___domestic ___or foreign

Limited Liability Company: _____domestic ___or foreign

Partnership: _____domestic ___or foreign

Statutory Trust: _____domestic ___or foreign

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 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 the State Finance and Procurement Article §13-221, Annotated Code of Maryland, which require the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year under reaches \$200,000.

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, 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 elections; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

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 bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - c) Prohibit its employees from working under the influence of drugs or alcohol;
 - d) Not hire or assign to work on the contract anyone 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 abuse 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 on 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 acknowledgments contained in that certain Bid/Proposal Affidavit dated _____, 20____, 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)

(Company name)

AIA A312-2010 Performance Bond
AIA A312-2010 Payment Bond



AIA® Document A312® – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____



AIA[®]

Document A312[®] – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

Bid Number and Description from Invitation to Bid

Address of the Project Location(s)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

AIA G702 and G703 – 1992 Payment Application

Application and Certificate for Payment

TO OWNER: Washington County Public Schools PROJECT: APPLICATION NO: 001
 82 Commonwealth Avenue PERIOD TO:
 Hagerstown, MD 21740 CONTRACT FOR: General Construction

FROM CONTRACTOR: VIA ARCHITECT: CONTRACT DATE: / /
 PROJECT NOS: / /

Distribution to:
 OWNER: ARCHITECT:
 CONTRACTOR: FIELD:
 OTHER:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

- 1. ORIGINAL CONTRACT SUM \$ 0.00
- 2. Net change by Change Orders \$ 0.00
- 3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 0.00
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00

5. RETAINAGE:

- a. 0 % of Completed Work (Column D + E on G703) \$ 0.00
- b. 0 % of Stored Material (Column F on G703) \$ 0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

6. TOTAL EARNED LESS RETAINAGE \$ 0.00
 (Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00
 (Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ 0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$	0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____
 State of: _____
 County of: _____
 Subscribed and sworn to before me this _____ day of _____

Notary Public: _____
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 0.00
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____
 This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT,

APPLICATION NO: 001

containing Contractor's signed certification is attached.

APPLICATION DATE:

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO:

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD (D + E)	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
	GRAND TOTAL	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	

AIA G704 – 2000 Certificate of Substantial Completion



AIA[®] Document G704[™] – 2000

Certificate of Substantial Completion

PROJECT:
(Name and address)

PROJECT NUMBER: /
CONTRACT FOR: General Construction
CONTRACT DATE:

OWNER:

ARCHITECT:

CONTRACTOR:

FIELD:

OTHER:

TO OWNER:
(Name and address)

TO CONTRACTOR:
(Name and address)

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

Warranty

Date of Commencement

ARCHITECT

BY

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$0.00

The Contractor will complete or correct the Work on the list of items attached hereto within Zero (0) days from the above date of Substantial Completion.

CONTRACTOR

BY

DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at _____ (time) on _____ (date).

OWNER

BY

DATE

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

**AIA A201 – 2017 General Conditions of the Contract for
Construction as Amended by Washington County Board of
Education**

 **AIA** Document A201[®] – 2017**General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address)*

See Invitation to Bid for Project Name, Location, and Detailed Description

THE OWNER:*(Name, legal status and address)*Board of Education of Washington County
10435 Downsville Pike
Hagerstown, MD 21740**THE ARCHITECT:***(Name, legal status and address)*

See Bid Specification for Architect

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT**
- 15 CLAIMS AND DISPUTES**

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Written material incorporated within the Agreement shall have precedence, and shall supersede conflicting requirements of the other Contract Documents. However, this provision shall apply only where such written material is explicit and clearly and fully enumerated within the Agreement, all provisions of various Contract Documents shall remain in force; notwithstanding all prior negotiations, representations, or agreements, either written or oral, including the Bidding Documents.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.2.1 The Contract documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.6.1 The Project Manual

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

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respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Addenda

Addenda are written or graphic instructions issued prior to the execution of the Contract which modifies or interprets the Bidding Documents, including Drawings, Project Manual, or Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 It is the responsibility of each Bidder, Contractor and Subcontractor to familiarize itself with the provisions of the Contract Documents.

§ 1.2.1.2 Alleged conflicts or ambiguities shall be brought to the attention of the Architect, in writing, prior to Proposal submission. The Architect shall then issue a written interpretation, in the form of an Addendum, addressing the area(s) in question.

§ 1.2.1.3 Should an alleged conflict or ambiguity be discovered after Proposal submission, it is hereby agreed that the Contractor and/or Subcontractor estimated the work on the provisions and interpretations as directed by the Architect. It is understood that these provisions shall not require the performance of any work unless such work is covered within the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results.

§ 1.2.1.4 If in the language of the Contract Documents it is alleged that certain provisions, words, phrases, and sentences may be considered unclear, equivocal, conflicting or ambiguous, it is understood and agreed, under the Contract, that they shall be interpreted by the Architect based on complementary provisions of all documents, the context of the item in question, and the intent of the Architect.

§ 1.2.1.5 Where any item of work or piece of equipment is referred to in the singular, it shall be deemed to apply to as many such items or pieces of equipment as required for a complete installation.

§ 1.2.1.6 Verbs such as include, provide, install, perform, apply, construct, supply, erect or similar words contained within the Contract Document are comprehensive actions to be performed by Contractor.

§ 1.2.1.7 The term “noted” or “as indicated” shall mean as shown, indicated or noted on the Drawings or in the Specifications or on any other Contract Document.

§ 1.2.1.8 The term “typical” means a representative example to be repeated in all similar situations. However, minor variations where necessary to adapt the typical item to a specific situation shall be included.

§ 1.2.1.9 Where reference is made to a text, standard, federal specifications, manufacturer’s directions, or to other publication, the latest publication published prior to the date of issuance of Contract Documents shall apply, unless identified in Specification by a specific publication date.

§ 1.2.1.10 Locations, sizes, and depth of existing services (i.e. manholes, utilities, etc.) are indicated are based on

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records made available by the utility companies and/or the authorities having jurisdiction. Under the work of each applicable section, examine the premises and verify visible, existing conditions prior to proposal submission and the starting of work.

§ 1.2.1.11 Drawing indications of items are generally diagrammatic. Connection and anchorage of materials, interconnection of equipment and accessories necessary to any system operation not otherwise detailed or specified shall be selected under the work of each section, subject to Architect's approval, to suit the requirements of the items.

§ 1.2.1.12 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 The organization of the Specifications into divisions, sections and paragraphs, and the arrangement of the Drawings shall in no way be construed to control or limit the manner in which the Contractor performs the work among his Subcontractors, nor shall they relieve the Contractor of his responsibility to perform the work, drawn and/or specified, in its entirety."

§ 1.2.2.1 Wherever in the Specifications there appears a reference to a "Contractor" or to the "Subcontractor" or a reference to a contractor, installer or supplier of a particular trade, or for a particular type of Work, such reference, regardless of the language thereof, shall be deemed a reference to the Contractor. It shall not be construed as relieving the Contractor from the duty to perform all of the Work and other obligations provided under this Contract.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Computed dimensions shall take precedence over scaled dimensions and large scale drawings shall take precedence over small scale drawings. The drawings are intended to show the general arrangement, design and extent of the Work, and are partly diagrammatic; they are not to be scaled or used in lieu of shop drawings where required.

§ 1.2.5 Should the Drawings conflict with themselves, or with the Specifications, the better quality or greater quantity of Work or materials shall be used for the purpose of bidding and, unless otherwise ordered in writing, shall be provided.

§ 1.2.6 Where typical or representative detail is shown on the drawings, this detail shall constitute the standard in workmanship and materials throughout corresponding parts of the Work and, when necessary, the Contractor shall be required to adapt such detail for use in said corresponding parts of the Work, said adaptation however, shall be subject to the consent of the Architect.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or

distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. IT

§ 1.6.2 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 1.6.3 All proposals, approvals, instruction, requests, claims, demands and other notices shall be made in writing on Contractor's stationary; meeting minutes and facsimile transmission will not be considered written notice.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Education of Washington County identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

Where the word "Architect" occurs in these specifications, it shall be taken to designate either Architect or Engineer.

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2.1.2 The Contractor understands that the Board of Education of Washington County is a public agency and no mechanics liens are permitted against its property.

(Paragraph Deleted)

§2.2 Paragraph deleted in its entirety.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

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assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term, “Architect” means the Architect or Architect’s authorized representative.

§ 2.3.3 If the employment of the Architect terminates, the Owner can choose to employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site to the extent reasonably required for the execution of the Work. Surveys shall be requested by the Contractor in writing within one (1) month of the date of the Contract. The Owner does not warrant or undertake responsibility for the location of utilities or the accuracy of tests concerning the soil, surface, and subsurface conditions.

§ 2.3.5 Information or services under the owner’s control shall at the Contractor’s written request be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

§ 2.3.6 The Contractor is responsible for obtaining and maintaining their own copies of Drawings and Project Manuals as necessary for execution of the Work.

§ 2.4 Owner’s Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, without additional charge, claim, or penalty until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction or derogation of the Owner’s rights under Section 4.3.4.

§ 2.4.2 If unforeseen conditions occur or are encountered which may substantially impair the quality of the Work unless the Work is suspended, the Owner may suspend the Work by written notice to the Contractor. In the event of such a suspension, Contractor shall be entitled to only adjustments in the Contract Time and an adjustment in the Contract Sum for costs actually incurred at the Project site by reason of such suspension. In any event where the Contractor reasonably determines that a suspension is required in such circumstances the Contractor shall promptly provide written notification to the Owner, and Architect of such determination.

§ 2.5 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner, and Architect’s and their respective consultants’ additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contract are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have

express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor warrants that it has made itself familiar with the project site, including soils, surface and subsurface conditions and the location of utilities, and the improvements to be constructed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. General information of existing conditions is available in the project manual.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 Paragraph deleted in its entirety.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor’s proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.1.1 Any construction means, methods, techniques, sequences, and procedures specified within the Contract Documents are to establish minimum standards only.

§ 3.3.1.2 Nothing contained within the contract Documents shall be construed as limiting the contractor’s sole responsibility under this Article.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.3.1 All inspections required by law shall be obtained by the Contractor including but not limited to those required by law to be obtained by the Owner. No failure of the Owner to obtain such inspection shall constitute a waiver of Contractor's obligation hereunder. The Contractor shall notify the Owner of any application for inspection required to be executed by the Owner.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 If the specification has listed three (3) or more product lines, substitutions will not be considered. Where less than three (3) manufacturers or products are listed in the Specifications, or the specification lists "Approved Equal" as an acceptable product, the burden of proof of equivalency rests with the Contractor and evidence shall be submitted to the Architect and approved by the Architect with final approval to be determined by the Owner.

Criteria includes by is not limited to performance, materials, craftsmanship, quality control, certification procedures or requirements, warranty, installation procedures, etc. Any proposed substitution, or proposed equal product, must be submitted to the Architect for review, 10 days prior to the bid date. After the receipt of bids and award of the Contract, the Owner and Architect are under no obligation to review or approve requests for substitution or equal products that were not specifically mentioned in the Specifications. The Owner reserves the right to request a substitute at any time during the project.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall at all times be in control of the work and shall be responsible for the safety of his employees, subcontractors, sub-subcontractors, and their employees.

§ 3.4.4 Not later than ten (10) days from the Contract Date, the Contractor shall provide to the Architect and the Owner a list showing the name and the manufacturer proposed to be used for each of the products identified in the Specification, and where applicable, the name of the installing Subcontractor.

§ 3.4.5 The Architect will promptly reply in writing to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to the list described in 3.4.4. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner or Architect to reply promptly shall not constitute notice of no reasonable objection. Acceptance of a substitute manufacturer must conform to such requirements.

§ 3.4.6 By making request for substitutions based on Clause 3.4.2 above, the Contractor; (a) represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (b) represents that he will provide the same warranty for the substitution that he would for that specified; (c) certifies that the cost data presented is complete and includes all related costs under his Contract, but excluded additional costs related to the substitution which subsequently become apparent; and (d) will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

§ 3.4.7 By law, all school sites are drug, alcohol and tobacco free.

§ 3.4.8 All products intended for use on this project shall be free of asbestos containing material in compliance with Local, State and Federal laws and regulations.

§ 3.4.9 All materials intended for use on this project shall be lead free. This requirement applies to all coatings, including materials applied at the place of fabrication or in the field.

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§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work be free from **defects**, and that the Work will conform with the requirements of the Contract Documents.

Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. **The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.**

§ 3.5.1.1 Provisions of these Contract Documents, including specified guarantees, shall not limit the extent of nature of any warranty or guarantee under the law; or limit the extent or nature of other warranty or guarantee provisions either express or implied including warranties of merchantability or fitness for particular use.

§ 3.5.1.2 Any Contract or Purchase pertaining to this project shall provide the Owner as ultimate user, with the right to all warranties and guarantees.

§ 3.5.1.3 No Contract or Purchase pertaining to this project shall allow for waiver of warranties or guarantees.

§ 3.5.1.4 Except as provided by the technical Specification Sections, each Contractor shall warrant all materials, workmanship and equipment against original defects or against injury from property and usual wear for a period of not less than two (2) years from the date of Substantial Completion of the project or designated portion thereof and shall repair or replace, at no additional cost to the Owner, any item which may become defective within the warranty period. Any exceptions or additions to this Paragraph are noted in the technical Specifications Sections. This Paragraph shall in no way limit the Contractor's obligation to warrant the work as identified in any other provisions of the Contract Documents.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for Work, or portions thereof, provided by the Contractor which are legally enacted when bids are received whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1.1 Contractor shall pay all costs associated with the performance of the work.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received. Provisions of this Paragraph shall apply to all items of work both permanent and temporary. The Owner will not reimburse the Contractor for the cost of elective permits which the Contractor chooses to secure in conjunction with his means and methods of executing the work or for any off-site permits. All permit fees not waived by the Governing Authorities will be reimbursed to the Contractor by the Owner with no mark up of overhead, profit, or bond to the Contractor. The Owner will responsible for payment of all fees associated with the set-up of permanent utilities.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 The Contractor shall review the Contract Documents to ascertain that the Contract Documents are to the best of the Contractor's knowledge in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Contractor shall promptly notify the Architect and Owner in writing, of any variance therewith and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.3.1 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume **full** responsibility for such Work and shall bear **the** attributable **costs**.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If the contractor disputes the Architect's determination or recommendation, of an equitable adjustment or that no change is justified, it may submit a Change Order Proposal for consideration. If the Owner disputes the Architect's determination, it may request a Change Order Proposal from the Contractor, or issue a Construction Change Directive.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as acceptable **to the Owner**, but the Contractor shall not be required to employ persons or entities **against which the Contractor makes reasonable objection**.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent and Other On-Site Personnel

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 Within five (5) days following the award of the contract, the Contractor shall furnish to the Owner a detailed resume of the proposed project manager, superintendent and assistant superintendent for the project. The Owner may make such investigations as he deems necessary to determine the qualifications of the proposed persons to perform their duties, and the Contractor shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject the candidates if the evidence submitted by or investigation of, the Contractor fails to satisfy the Owner that they are qualified to perform the duties.

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§ 3.9.3 An experienced project manager must be assigned to this project. The project manager's duties generally are to set schedules, to coordinate with the Architect's office and the field, to expedite subcontractors, to handle paperwork, to represent the Contractor in meetings and to maintain documentation in a timely manner. Communicating with the Architect and the Owner is an extremely important part of this job. If the project manager does not maintain the prompt performance of his duties, the Owner can direct the replacement and the approval of personnel for this position.

§ 3.9.4 The position of superintendent is to be one of the managing the Work on site and generally not to assist in any of the physical construction work. The superintendent's duties are to coordinate, plan, problem solve, and keep the Work on schedule. The superintendent shall have an assistant superintendent who is at the Work observing the subcontractors, anticipating material needs and to assist the superintendent as required. The assistant superintendent will also be in charge and perform any other duties when the superintendent is absent. No work shall be done without one of these personnel there at the Work site including weekends, evenings, and holidays.

§ 3.9.5 If the above personnel do not perform their duties to the Owner's satisfaction, the Owner may order them replaced and the Contractor shall comply therewith. No claim will be allowed for actions by the Owner under this provision.

§ 3.9.6 The Contractor shall coordinate and supervise the work of the subcontractors to the end so that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the work. The Contractors and Subcontractors shall at all times afford each trade, any separate Contractor, or the Owner, every reasonable opportunity for the installation of work and the storage of materials.

§ 3.9.7 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work in accordance with the Specifications. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.1.1 The Contractor shall revise and update construction schedule for the Work on a monthly basis, and submit to Owner and Architect. The Construction Schedule shall give accurate representation to the entire Project, for all completed current, and planned activities within scope of Project, and include all respective dates.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 This shall be completed prior to final payment and shall be executed by the Contractor certifying that they have been kept in accordance with the provisions of this subparagraph and accurately reflect the construction of the Work as built. In addition to one copy of Drawings, Specifications, Addenda, Shop Drawings, Change Orders and Modifications, the Contractor shall maintain one additional set of Contract Documents to be used solely as a record for the future preparation of “As-Built” drawings. The Contractor shall record all changes and departures from the Contract Documents (floor plans, site plans, ceiling plans, etc.) and the correct locations of concealed work, recording them in red ink on the Documents maintained for this purpose. Recording shall be made immediately after each item of work is completed. At the completion of the Project and before a final payment is made, the Contractor shall deliver these documents to the Architect.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment or systems for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect’s approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect

of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.11 Submittal review times listed in the Contract Documents are the minimum review time per submission. The Architect is not obligated to approve submittals on the first submission or any subsequent submission if the submittals are incomplete or require revision. It is the responsibility of the Contractor to schedule submittals well in advance of order and delivery times, allowing a reasonable variance in review time and the possibility of revisions and resubmission.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall assume responsibility for all of its construction activities on the site. All employees, subcontractors, sub-subcontractors, and material supplies of the Contractor shall be bound by the directions of the Contractor pertaining to disposition of materials and equipment on the site and precautions necessary for protection of life and property. The Contractor shall be responsible for and shall maintain continuous access to the work for use by all contractors, employees, subcontractor, sub-subcontractors, and material suppliers.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 No Contractor shall cut structural members except with written permission of the Owner and Architect.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall on a daily basis, police and keep clean the site and surrounding areas of the project of his materials, rubbish, tools, construction equipment, machinery, or any materials to be stored thereon, either temporarily or permanently.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify, protect, defend and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work caused in whole or in part by acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The obligations of the Contractor under this section 3.18 shall not extend to the liability of the Architect, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of, or the failure to give, direction or instructions by the Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage and provided that the giving of such instruction is usual and customary as otherwise herein defined.

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§ 3.18.4 The Contractor agrees to perform the Work in a safe and proper manner and comply with all laws and Ordinances referring to such Work, and to indemnify and save the Owner, his respective agents, consultants, servants, and employees (hereinafter the “Indemnities”). Such indemnity, as used in this Article, includes the defense of claims, made against the Indemnities and all penalties for violation of the same.

§ 3.18.5 The purchase of insurance by the Contractor shall in no event be construed as a fulfillment or discharge of the obligations set forth in this section.

§ 3.18.6 To the fullest extent permitted by Law, the Contractor shall properly guard its Work and areas affected from being injured by it or by the condition of the Project Site, and shall in all respects comply with any and all provisions of the law and local ordinances relating to the maintenance of danger signals, barriers, lights, and similar safeguards respecting falling materials and in and about all excavations, protruding nails, hoists, openings, scaffolding, stairways and other parts of the work and adjacent area where the same are required. The Contractor agrees to indemnify, defend and save harmless the Indemnities against loss and expense by reason of liability imposed by law upon the Indemnities for damages because of bodily injuries including death at any time resulting therefrom, sustained by any person or persons other than employees of the Contractor, whether or not the Indemnities are negligent in such event.

§ 3.18.7 To the fullest extent permitted by law, the Contractor shall agree to indemnify, defend and save harmless the Indemnities against loss and expense by reason of the liability imposed by law upon the Indemnities for damages because of bodily injuries, including death at any time resulting therefrom, sustained by any employee of the Contractor while at the site where Work under this Contract is conducted, or elsewhere, while engaged in the performance of Work, under this contract. The Contractor will not indemnify the Indemnities’ sole or concurrent negligence, whether attributable to a breach of statutory duty, or administration regulation, or otherwise.

§ 3.18.8 The Contractor agrees to indemnify and hold the Indemnities harmless by reason of any liens, claims demands or other liability, which may be asserted against the Indemnities by any other Independent Contractor on the Project, and which arise out of any act or omission of the Contractor.

§ 3.18.9 In the event of any such liability, loss expense, damage or injury, or if any claim or demand for damage is made against the Indemnities, the Owner may withhold from any payment due or thereafter to become due to the Contractor under the terms of this Contract, an amount sufficient in its judgment to protect and indemnify Indemnities for any and all such claims, liability expense, loss, damage or injury; or the Owner, in its sole decision may require the Contractor to furnish a surety bond satisfactory to the Owner, guaranteeing such protection, which bond shall be furnished by the Contractor within five (5) days written demand had been made thereafter.

§ 3.18.10 The indemnification obligation of the Contractor under this Article 3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any Subcontractor under Workman’s Compensation Acts, disability Benefits Acts or other employee benefits Acts.

§ 3.18.11 The Owner will obtain and pay for, if necessary, the general building permit, post applicable utility bonds and pay access fees and right of way fees. The Contractor will arrange and pay for the cost of all other “trade” permits, approvals and inspections. The Contractor will be responsible for notifying all agencies to schedule inspections or approvals, whether permits or fees are in the Contractor’s or the Owner’s responsibility.

§ 3.18.12 Contractor shall not place any signs, billboards or poster on any portion of the project site, building property or fences (temporary or permanent) surrounding the same, unless prior written permission has been received from the Owner, and then only of a size, material, color and type and a location approved by the Owner.

§ 3.18.13 The Contractor shall be responsible for implementing safety programs for his own forces and those of his/her subcontractors in accordance with Federal, State, and local requirements. In addition to other

indemnities contained herein the Contractor agrees to indemnify and hold harmless against any and all damages, claims and losses, the Owner and/or Architect from any and all damages, claims and losses made as a result of Contractor's failure to abide by this provision, the Contract and for any and all safety and health (including but not limited to OSHA, MOSH, and VOSH) claims or violations that are alleged or brought. Said indemnification shall include but not be limited to Owner's and/or Architect's attorney's fees and costs.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures, unless otherwise specifically stated by the Architect. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Architect shall notify the Owner and Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents **and acceptable to the Owner.**

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, or bidding requirements, the Contractor, as soon as practicable after award of the Contract, but not later than 48 hours after requested by the Owner, shall notify in writing, the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected **without approval of the Owner.**

§ 5.2.5 If the Contractor fails to submit names of persons or entities to whom the Owner and Architect has no reasonable objection within a reasonable amount of time, the Contract may be terminated by the Owner.

§ 5.2.6 The Contractor shall not be entitled to progress payments prior to approval of the persons or entities as provided in Subparagraph 5.2.1.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2. or stoppage of the Work pursuant to Subparagraph 14.2.3 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

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- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Paragraph deleted in its entirety.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Paragraph deleted in its entirety.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed construction or partially completed construction or to property of the Owner or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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§ 6.2.6 Should the Contractor be caused damage by a another Contractor, no action will lie against the Owner and the Owner shall have no liabilities therefore, but the Contractor may assert his claim for damages against such other Contractor as the third party beneficiary under the Contract between such other Contractor and the Owner. Should such other Contractor make a claim against the Owner or Architect on account of damages alleged to have been so sustained, such the Contractor agrees that it will hold the Owner or Architect harmless against any such claim or suit and that it will reimburse to the Owner or Architect as the case may be, the cost of defending such suit, including reasonable attorney's fees, and if any judgment against the Owner or Architect arises therefrom the Contractor shall pay or satisfy it and shall pay all costs incurred by the Owner or Architect.

§ 6.2.7 Upon entering the project, the Contractor shall locate all general reference points provided, and take such action as necessary to prevent their destruction.

§ 6.2.8 Under the work of each Contractor, subcontractor, and all personnel. Lay out work and be responsible for all lines, levels, elevations, and measurements from points provided. The Contractor shall exercise proper precautions to verify conditions indicated in the Contract Documents and be responsible for any error resulting from failure to exercise such precaution.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall **not release the Contractor of obligations under the contract and shall** be based upon agreement among the Owner, Contractor and Architect; A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the **Contractor**.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 **Except in any emergency which might endanger life or property, no extra work or charge shall be made unless a written change order from the Owner and/or Architect has been received by the Contractor.**

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may, by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order **or in the event that full execution of a Change Order may cause undo delay to the work.**

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.6.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the work attributable to the change, **including an allowance for overhead and profit in accordance with the schedule set for in Paragraph 7.3.4.5 below.** In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

(Paragraph Deleted)

All change Orders shall be subject to the following format for itemization of the costs:

1. Attach an itemization of labor hours. A certified payroll affidavit may be required to substantiate labor rates. The cost of foreman and superintendents may be added only when the change order makes necessary the hiring of additional supervisory personnel or makes their employment for time in addition to that required by the basic contract, or if the foreman or superintendent participates in the actual work of the Change Order.
2. Labor burden percentage costs shall include all fringes, taxes, insurance, liabilities, workmen's compensation and unemployment. Labor burden percentage rates are subject to approval of the Owner and are not subject to profit and overhead.
3. Attach an itemization of all materials used listing unit prices and extended prices.
4. Attach an itemization of all equipment used and rental rates. If equipment is a rental, attach copy of rental invoice. Rental equipment and contractor-owner equipment costs shall include all costs associated with the equipment, i.e. transportation, set-up gas and oil. Rental rates shall not exceed rates established by local rental companies and "MEANS DATA" rates.
5. Profit and overhead shall be considered full reimbursement for any additional expenses caused by the change order work. The Contractor shall agree to profit and overhead markup on work by his own forces as outlined in paragraph 10 below. These allowances for overhead and profit include among other costs; maintenance and/or operations of Contractor's regular established office, branch office, and other facilities; resident and/or non-actively engaged supervision; time keepers; clerks; stenographers' watchmen; cost of correspondence; increased item of warranty under the change.
6. The cost of the bond is not subject to overhead and profit.
7. A Change Order request shall not be considered unless submitted with all required and requested supporting documentation. All parties to the change shall use the Change Order Format.
8. For all work to be performed by Subcontractor/Subcontractors, the Contractor shall furnish the Subcontractors' itemized proposal which shall contain original signatures by an authorized representative of the Subcontracting firm. If requested by the Owner or Architect, proposal from suppliers or other supporting data to substantiate the Contractor's or subcontractor's cost shall be furnished.

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9. Change Order costs shall not exceed unit pricing as provided in the Contract Documents.

10. Unless otherwise specified, the allowable markup for combined overhead and profit, for work performed by the Contractor with his own forces will be based on the monetary value of the work in accordance with the following schedule.

VALUE OF WORK	COMBINED OVERHEAD AND PROFIT
\$0 - \$1,000	15%
\$1,001 - \$5,000	10%
\$5,001 - \$10,000	7%
\$10,001 - \$25,000	5%
Over \$25,000	Negotiated, but not more than 5%

11. For extra work performed by a Subcontractor with his own organization, the percentages for combined overhead and profit will be as outlined above. On the work partly or solely performed by a Subcontractor, the Contract will be allowed five percent (5%) of total costs of the Subcontractor's labor, materials, overhead and profit only.

12. The Contractor shall submit all Change Order on the Owner's Change Order Request Form, which is attached in the Contractor Documents.

§ 7.3.5 Paragraph deleted in its entirety.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6.1 Failure of the Contractor to advise the Architect of any disagreement with the Construction Change Directive within a reasonable period, and prior to the commencement of the change in the work involved, will constitute the Contractor's agreement to the terms provided in the Construction Change Directive.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order. Failure of the Contractor to advise the Architect of any disagreement with the construction Change Directive within a reasonable period, and prior to the commencement of the change in the work involved, will constitute the Contractor's agreement to the terms provided in the Construction Change Directive.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Paragraph deleted in its entirety.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect, with the concurrence of the Owner, will have authority to order minor changes in the Work not involving adjust in the contract Sum or extension of the contract Time and not inconsistent with the intent of the purposes of the building and the contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Notice to Proceed. If there is no Notice to Proceed it shall be such other date as may be established in the Owner-Contractor Agreement or elsewhere in the Contract Documents. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8 or when the required certificate of use or occupancy has been received by the Owner, whichever is later.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 Should the progress of the Work be delayed by any fault, neglect, act, or omission of the Contractor or any person or firm employed by the Contractor or should it be necessary to complete the Work within the time permitted for the Contractor’s work, the Contractor shall, at its own expense, work such overtime as may be necessary to make up for all lost time and to avoid delay in completion of the Work. The Contractor shall compensate the Owner for and hold the Owner harmless against any and all cost, expense, losses, liability, and damages which the Owner may sustain or incur by reason of such delay.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Requests for extension of completion time due to conditions over which the Contractor has no control or its subcontractors and suppliers have no control will be reviewed by the Owner after written application is made to the Owner and Architect for a time extension, with reasons stated clearly, and detailed proof given for all delays beyond the Contractor’s or its subcontractors and suppliers control. No time extension will be allowed except by written and specific approval of the Owner. Delays beyond the Contractor’s or its subcontractors and suppliers control may include: an act or neglect of the Owner’s own forces, Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by change orders in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s or its subcontractors and suppliers control or by other causes which the Owner and Architect determine may justify delay, then the Contract Time shall be extended by Change Order. Extension of time shall be Contractor’s sole remedy for delays unless the same shall have been caused by acts constituting intentional interference by the Owner with Contractor’s performance of the work where and to the extent such acts continue after contractor’s notice to Owner of such interference. Owner’s exercise of any of its rights under Article 7, Changes in the work, regardless of the extent or number of such changes, or Owner’s exercise of any of its remedies of suspension of the work, or requirement of correction or re-execution of any defective work, shall not under any circumstances, constitute intentional interference with

Contractor's performance of the work. No claim for extension of time shall be made or entertained on the basis of rejection of work in place, shop drawings, or samples or for nonconformance with the Contract Documents.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, adjustment of the applicable unit prices may be considered by the Owner or Contractor.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any proposed changes to the schedule of values shall be submitted to the Architect and Owner and supported by such data to substantiate its accuracy as either may require, and unless objected to by either, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Paragraph deleted in its entirety.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless previously approved by Owner, payments shall not be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Similarly, unless previously approved by the Owner, payments shall not be made for materials and/or equipment stored off the site. Payment for materials and equipment stored off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Nothing contained herein diminishes the responsibility of the contractor to replace stolen, defective, or vandalized work, materials or equipment.

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§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Retainage in the amount of five (5%) percent shall be withheld with each application for payment until Substantial Completion.

§ 9.4.4 In any event where the Architect, with cause does not certify payment or withholds certification to any extent, the Contractor shall nonetheless continue to fully perform the work.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 mechanic's lien notice or action filed, or reasonable evidence indicating probable filling of each notice of action.

§ 9.5.2 Paragraph deleted in its entirety.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Progress payments shall not be due until the following conditions have been achieved: (A) the Contractor has submitted a sworn Application for Payment in an Owner's approved format showing all money paid out and costs incurred to the date of Application for Payment; (B) The Contractor has submitted unconditional lien waiver on a form acceptable to the Owner, establishing the total amount of payments to date and conditional lien waivers for the amount of payments to date and conditional lien waivers for the amount of the current request for all Subcontractors and Supplies.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contractor Documents the amount certified by the Architect, then the Contractor may, upon fifteen (15) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay, and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 When the Architect and owner agree that the project has reached "Substantial Completion" as set forth in paragraph 8.1.3 is on schedule, and it appears that there are no complications or problems in completing the job, the retainage may be reduced to two and a half percent (2.5%) at the Owner's discretion.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect

finds the Work acceptable under the Contract Documents and the Contract fully performed, and all warranties, O&M manuals, demonstrations, and training have been received or conducted, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment with AIA Form Consent of Surety to Final Payment G707 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, release and waivers of liens, claims, security interest or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner and Release of Liens on the AIA Form Contractor's Affidavit of Release of Liens G706A and AIA Form Contractor's Affidavit of Payment of Debts and Claims G706 (6) all records, drawings and specifications, addenda, change orders, and other modifications maintained at the site under the subparagraph 3.11.1, all warranties, instruction and maintenance manuals required. If a subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Final payment to the Contractor shall not become due until all close-out documents have been properly submitted to and certified by the Architect, and delivered by the Architect to the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.
- .5 faulty or deceptive work appearing after substantial completion**

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 Final payment constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor not later than sixty (60) days after the work has been completed and accepted by the Owner, and the Architect, in accordance with all other provisions of 9.10.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall solely be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Owner. It is expressly understood and agreed that the Owner, the Architect, and his Project Representative are not in charge of the Work or in control thereof. Any provisions in the contract Documents in conflict with this Article shall be null and void.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the Owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. This person, or approved alternate person, shall be on site at all times while personnel for whom they are responsible are on site. This person will be fully responsible for implementing and enforcing a program amongst his company's employees, that ensures their safety and the safety of others affected by their work, and that is in full compliance with governing agencies including the Occupational Safety and Health Administration (OSHA).

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety or the safety of persons or property and the Contractor shall protect adjoining properties, streets, walkways, sidewalks, and paths so as to protect the safety of persons or property using such adjoining properties, walkways, sidewalks and paths.

§ 10.2.8 The Contractor shall maintain updated safety data sheets (SDS) for all materials used. A copy of the list must be kept on site by the Contractor in a readily accessible area. Under no circumstances will the storage of hazardous materials unnecessary for completion of the Work to be allowed on site. It is the

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Contractor's responsibility to promptly remove all stored hazardous materials from the site upon completion of the Work for which it is intended.

§ 10.2.9 The Contractor shall protect excavations and structures from damage by rain, water, ground water or water from any other source.

§ 10.2.10 The Contractor shall provide constant protection to maintain work, materials, apparatus and fixture free from injury and damage by rain, snow, wind, storms, frost, or heat and normal construction operations and shall protect work as necessary or at the end of each day's work.

§ 10.2.11 The Contractor shall remove work damaged due to failure to provide specified protection and replace the work at no additional cost to the Owner.

§ 10.2.12 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.1.1 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resume in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, but written agreement of the Owner and contractor, or in accordance with final determination by the Architect.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence

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of the party seeking indemnity. Failure of contractor to stop work upon encountering asbestos or PCB per Subparagraph 10.3.1 shall relieve the Owner of responsibility for any losses by the Contractor attributable to these materials.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In any case of an emergency, the Contractor shall immediately respond in accordance with the Contractor's safety plan and notify the Architect and Owner by the most expeditious means available, with a subsequent written notice explaining the situation and actions taken.

§ 10.4.1 Additional compensation or extension of time will not be considered or permitted for emergencies arising from delay, damage, or loss as stipulated in 8.2.4 and 10.2.5 or other applicable provisions.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insured under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.1.1 **The Contractor shall require all Subcontractors to maintain during the term of the contract commercial general liability insurance, business auto liability insurance, workers compensation insurance, employer liability insurance and umbrella excess liability insurance to the same extent required of the Contractor. The Contractor shall furnish Subcontractors' certificates of insurance to the Owner immediately upon request.**

§ 11.1.1.2 All insurance policies required hereunder shall be endorsed to provide that policy is not subject to cancellation, non-renewal or material reduction coverage until sixty (60) days prior written notice has been given to the Owner.

§ 11.1.1.3 **All required insurance coverages must be underwritten by insurers allowed to do business in the State of Maryland and acceptable to the Owner. The insurers must also have a policy holders' rating of "A-" or better, and financial size of "Class VII" or better in the latest evaluation by A.M. Best Company, unless Owner grants specific approval for an exception.**

§ 11.1.2 Insurance Limits

§ 11.1.2.1 The Contractor shall purchase and maintain the following insurance coverages on an "occurrence" basis which shall be written for not less than the limits specified below or required by law, whichever is greater.

§ 11.1.2.1.1. Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

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\$1,000,000 each occurrence;
\$1,000,000 personal and advertising injury;
\$2,000,000 general aggregate; and
\$2,000,000 projects/completed operations aggregate

This insurance shall include coverage for all of the following:

- i. General aggregate limit applying on a per project basis;
- ii. Liability arising from premises and operations;
- iii. Liability arising from actions of independent contractors;
- iv. Liability arising from products and completed operations with such coverage to be maintained for two years after completion of Work;
- v. Contractual liability including protection for contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- vi. Liability arising from the explosion, collapse, or underground (XCU) hazards.

§ 11.1.2.1.2 Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:

- i. Liability arising out of ownership, maintenance or use of any automobile(s) (or hired and non-owned automobile(s) only if no owned automobile(s)); and
- ii. Automobile(s) contractual liability.

§ 11.1.2.1.3 Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard “other states” coverage; employer’s liability insurance or its equivalent with minimum limits of:

\$100,000 each accident for bodily injury by accident;
\$100,000 each employee for bodily injury by disease; and
\$500,000 policy limit for bodily injury by disease.

§ 11.1.2.1.4 Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:

\$5,000,000 per occurrence;
\$5,000,000 aggregate for other than products/completed operations and auto liability; and \$5,000,000 products/completed operations aggregate

And including all of the following coverages on the applicable schedule of underlying insurance;

- i. Commercial general liability
- ii. Business auto liability; and
- iii. Employers’ liability.

§ 11.1.2.1.5 The Board of Education of Washington County including its’ elected and appointed officials, officers, consultants, agents and employees and authorized volunteers of the Board of Education of Washington County shall be named as additional insureds on the contractor’s commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractors projects, installation, and/or services provided under this Contract. Such coverage shall extend to cover the additional insured (s) for liability arising out of the following:

- i. On-going operations; and
- ii. Projects and completed operations.

The commercial general liability policy and the umbrella excess liability or excess liability policies, if required herein, must include additional insured language, which shall afford liability coverage for the exposures listed above in i. and ii.

§ 11.1.2.1.6 The certificate of insurance must be provided to the Owner prior to commencement of the Contract.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are ready available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Liability Insurance

§ 11.2.1 The Owner will not provide Builder's Risk protection as it does not apply.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, and Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate shall require of the Architect, Architect's consultant, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Property Insurance

§ 11.4.1 The Owner will effect and maintain "All Risk" insurance for physical loss or vandalism and malicious mischief perils subject to a deductible of \$1,000 per occurrence upon all structures and appurtenances thereto on which the work of the contract is to be done to the full insurable value thereof, including materials in place or to be used as part of the permanent construction. Coverage shall protect the Owner, the Contractor and Subcontractor as interests may appear. The Owner does not maintain insurance of any kind on tools, equipment, temporary offices, sheds, shacks, and other property of the Contractor or his employees, no materials or supplies stored on site or away from the job site. It shall be the complete responsibility of the Contractor to provide for his own protection and that of his employees against any losses of such tools, equipment, and other property and materials.

§ 11.4.2 The Owner will not provide boiler and machinery insurances as it does not apply.

§ 11.4.3 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6. PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 Unless waived by the Owner in writing, the Contractor shall furnish a Performance Bond and labor and Material Payment Bond covering the faithful performance of the Contract and the payment of all obligations arising thereunder and complying with the requirements of Maryland law. Both Bonds shall be in the amount of one hundred percent (100%) of the contract amount and shall name the Owner as Obligee. Firms issuing bonds must be licensed to write bonds in the State of Maryland. The Contractor shall pay premiums for required bonds. Obtaining of bonds by contractor shall be a condition precedent to effectuation of the Contract between the Owner and Contractor. If additional work is authorized the amounts of the bonds shall be increased to cover the value of the increased Contract sum. All bonds shall conform to the requirement of the Maryland Little Miller Act .

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If any portion of the Work is covered contrary to the request of the Architect or to the requirements specifically expressed in the Contract Documents, it must, if required in writing by either, the Architect, Owner, or any other governmental agency, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or work that fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or

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not fabricated, installed or completed. The contractor shall bear costs of correction such rejected Work, including additional testing and inspections and compensation for the Architect's, the Owner's, or any governmental agency's services and expenses made necessary thereby.

§ 12.2.1.1 Defective work shall include but not be limited to: Work which may be caused by deterioration or failure to perform due to premature wear (not occasioned by abuse), inherent defects in materials, workmanship of manufacturer, or fabrication, or improper execution of work.

§ 12.2.1.2 Cost of correcting such related work also includes all contingent damages arising therefrom, including damages to the work (whether installed by the contractor or another) and to other property of the Owner.

§ 12.2.1.3 Such warranties as provided herein do not deprive the Owner of the Owner's right to prosecute any claim for breach of contract.

§ 12.2.1.4 Any defective or nonconforming work during this period, causing hazard to life, safety, property, or causing the Owner a financial loss, shall be corrected immediately without regard to normal working hours. The Owner will immediately endeavor to make telephone notice to the Contractor on the next working day.

§ 12.2.1.5 The Owner shall direct, if endeavors to contract the Contractor fail, certain telephone notification to Subcontractors in order to expedite emergency repairs. The Contractor shall not be relieved of this responsibility and shall supervise and direct correction of defects as required by the Contract Documents.

§ 12.2.1.6 The manufacturer of a product may be specifically mentioned as a party to a warranty. Then, in such cases, it shall be the contractor's obligation to produce the required warranty of the manufacturer and submit it to the Architect for examination and approval. Inclusion of a manufacturer as a party to a warranty does not relieve the Contractor from the requirements of the Contract Documents.

§ 12.2.1.7 Warranties on operating systems, equipment, or components placed in operation prior to Substantial Completion or acceptance shall begin on the date of Substantial Completion.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract documents, any of the work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the correction by the contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contract and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2. The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other Contractors caused by the Contractor's correction or removal of work

which is not in accordance with the requirements of the Contract Documents, including attorneys' fees and expenses.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Inspection, failure to inspect, or approval or acceptance of any part of the work, or any payment on account thereof, shall not in any way limit the right to reject materials or equipment later found by the Architect, the Owner, or any Governmental Agency to be defective or not in accordance with requirements of the Contract Documents.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No consent or waiver, expressed or implied, by either party to this agreement to or of any breach or default by the other in performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by, or tentative approval or acceptance by the Owner or the failure by Owner to perform any inspection hereunder, shall not constitute final acceptance of the work or any part thereof, and shall not release Contractor from any of its obligation hereunder.

§13.3.3 Contractor is subject to liquidated damages in the amount set forth on the bid form specification for delay of the date established in the Contract Documents for substantial completion, when such delay has been determined to be caused by the Contractor.

§ 13.4 Tests and Inspections

§ 13.4.1 Where Specifications or IBC Code required testing by an independent testing laboratory the Owner will retain and pay for the services of a testing laboratory under a separate contract. The Contractor shall be responsible

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for coordinating the scheduling of all tests with the testing laboratory. Reports, will be delivered to the Owner, Architect, and the Contractor simultaneously.

1. Tests, inspections and approvals of portions of the Work not listed in the Contract Documents be required by the laws, ordinances, rules, regulations or orders of public authorities or municipalities having jurisdiction shall be made at an appropriate time.
2. The Contractor shall make arrangement for such tests, inspections and approvals with the Owner's independent testing laboratory or with the appropriate public authority.
3. The Contractor shall give the Owner and Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe the procedures.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraph Deleted)

§13.4.7 If required, subsequent to completion of construction, the Contractor shall submit to the Owner a signed certification indicating that to the best of his knowledge and belief, Work was performed in accordance with the approved Construction Documents.

§ 13.5 Interest.

No interest shall be paid by the Owner to Contractor under the Contract Documents.

§ 13.6.1 Contractor recognizes and agrees that Owner is a governmental Agency and that the statute of limitations is not applicable to the Owner.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§
(Paragraphs Deleted)

14.1.2 Paragraph deleted in its entirety.

(Paragraph Deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by

the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed to date.

§ 14.1.4 Paragraph deleted in its entirety.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 If the Contractor is adjudged bankrupt or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of insolvency, or if he fails to make prompt payment for materials, supplies, laborer other items purchase or used in connection with the work or to Subcontractors, or if he fails to pursue the work in accordance with the Contract Documents or schedules established, or fails to supply enough skilled supervisors, or workmen, or materials, tools, equipment, or supplies, or the proper quality (including failure occasioned by strike, picketing, boycott, or other cessation of the work), or if he interferes with or disrupts or threatens to interfere or disrupt the operations of the Owner, or any other Contractor or Subcontractor, which by reason of labor dispute, picketing, boycott, other cause or if it is otherwise guilty of a substantial violation of the provision of the Contract Documents, the Owner may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, two (2) days' notice, or immediately in the event the default will in the reasonable judgment of the Owner, endanger the project if permitted to continue, terminate the employment of the Contractor and take possession of the site and materials in the Contractor's shop or in transit and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished

§ 14.2.2 When any of the above reasons exist, and the Owner confirms that sufficient cause exists to justify such action, the Owner may without prejudice to any other rights or remedies of the Owner and after given the Contractor and the Contractor's surety, if any, two (2) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety;

1. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor
2. Accept assignment of subcontractors pursuant to Section 5.4; and
3. Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract sum exceeds costs of finishing the work, including compensation for the Architects services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Architect in the manner provided in Paragraph 9.4, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In addition to, and not in substitution of the remedies herein specified, the Owner may, with cause, upon two (2) days written notice to the Contractor, provide or arrange for the provision of such workmen and materials necessary to continue and complete the work contracted for hereunder for the account of the Contractor and at Contractor's cost and expense, and apply any and all funds which may become due to the Contractor thereto, all without terminating, rescinding or voiding this Agreement of releasing the Contractor from any liability hereunder.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately in accordance with instructions from the owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph;

1. cease operation as specified in the notice;
2. place no further orders and enter into no further Subcontracts for materials, labor services or facilities except as necessary to complete on-going portions of the Contract as directed by the Owner;
3. terminate all subcontracts and orders to the extent they relate to the Work terminated;
4. proceed to complete the performance of Work not terminated; and
5. take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work.

§ 14.4.3 Upon such termination, The Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's Instructions. The Contractor hereby waives and forfeits all other claims for payment and damages including without limitation, anticipated profits.

§ 14.4.4 The Owner shall be credited (1) payments previously made to the Contractor for the terminated portions of the Work, (2) potential claims which the Owner has against the Contractor under the contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum. The Owner may at its option also require that the Contractor assign the balance of the Contract to another Contractor of the Owner's choosing. If the Contractor fails or refuses to execute any documents necessary to effectuate such assignment, the Owner may execute such documents on behalf of the Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Time Limits on Claims

(Paragraph Deleted)

Except as indicated in §

15.1.6 claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

Claims must be initiated by written notice to the Architect and the other party.

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§ 15.1.3 Notice of Claims

§ 15.1.3.1 Written notice shall be on Contractor's stationary; meeting minutes and facsimile transmission will not be considered written notice.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the contract Documents except the Owner may withhold payment to an extent reasonably necessary to secure or compensate for a claim.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.6.3 It has been determined that the following table will be used to determine allowable non-compensable time extensions to the contract for "unusually severe weather" at the construction site based on a five (5) day work week.

MONTH	# of work days (*)
January	7
February	7
March	5
April	4
May	3
June	3
July	3
August	3
September	3
October	4
November	4
December	4

(* # of work days that may be expected to occur under normal weather conditions)

Actual adverse weather days must prevent work on critical activities for 50 percent or more of the contractor's scheduled work day. The number of actual adverse weather delays days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated

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chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delays exceed the number of days anticipated as listed above, the contractor shall be entitled to additional Contract time.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to resolution of the claim in accordance with Article 6 of AIA Document A101-2017. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand resolution of the claim in accordance with Article 6 of AIA Document A101-2017 without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to consider payment for such services but the Owner while not obligated to pay such expenses, will not unreasonably withhold such payment.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding

on the parties to the extent that both parties agree, but subject to binding dispute resolution as defined per Article 6 of AIA Document A101-2017 if the dispute remains unresolved as defined.

§ 15.2.6 Paragraph deleted in its entirety

§ 15.2.6.1 Paragraph deleted in its entirety.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 16.1 POLICES OF EMPLOYMENT

§16.1.1 **The Contractor shall maintain the policies of employment as follows: The Contractor and all Subcontractors shall not discriminate against any employee, applicant or subcontractor for employment. The Contractor and all Subcontractors shall ensure that they do not discriminate against employees, applicants, and subcontractors on the basis of race, color, sex, age, ancestry/national origin, religion, disability, gender identity/expression, marital status, or sexual orientation.**

§16.1.2 **The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.**

§16.1.3 **The Contractor and all subcontractors shall in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without discrimination as described in §16.1.1.**

§16.1.4. **When specified by Article 8.7 of the AIA Document A101-2017 Standard Form of Agreement between Owner and Contractor, Minority Business Enterprise (MBE) Requirements are part of the Conditions of the Contract.**

§ 16.1.5 The Maryland General Assembly has enacted a law that prohibits a person who enters into a contract with the Board of Education of Washington County from knowingly employing an individual to work at a school if the individual is a registered sex offender. It is your duty as
(Paragraph Deleted)

a person who has or, who may have, a contract with the Board of Education of Washington County to confirm whether an individual you plan to assign to work at a Washington County Public School(s) location is a registered sex offender. A person who violates this law is guilty of a misdemeanor and or conviction and is subject to imprisonment not exceeding five (5) years or a fine not exceeding \$5,000.00 or both.

In the event you assign an individual to work at a Washington County Public School(s) location and a claim or lawsuit is asserted against the Board of Education of Washington County or any of its employees or agents as a result of such act or omission, you must indemnify and hold harmless the Board of Education of Washington County and its employees and agents from any and all losses, expenses, litigation expenses, attorney's fees, court costs, settlement, judgments or the like.

§ 16.1.6 **Protection of Resident Workers Clause****The Contractor shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to its activities and obligation under**
(Paragraph Deleted)

this Contract. The Immigration & Nationality Act (INA) includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and

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aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired. The Contractor shall establish appropriate procedures and controls so no services or products under the contract documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. For more information, visit the U.S. Citizenship and Immigration Services website: www.uscis.gov



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Change Order Proposal Form

Proposal Request Form

Project Name: _____

Date: _____

Proposal Request #: _____

Prime Contractor: _____

Subcontractor: _____

Sub-Subcontractor: _____

Proposal Scope (Include a brief description of the work)

A. <u>Labor, Materials, Equipment</u>		
A.1 Direct Payroll - wages less burden (no fringes, insurances, taxes, etc)		\$ -
A.2 Material Cost		\$ -
A.3 Equipment Rental		\$ -
A.4 Direct Equipment Cost		\$ -
Subtotal A - Labor, Materials, Equipment:		\$ - A

B. <u>Overhead & Profit</u>		
Allowable Overhead & Profit = (Subtotal A) x (% listed below)		
15% \$0.00 - \$1,000		\$ -
10% \$1,001 - \$5,000		\$ -
7% \$5,001 - \$10,000		\$ -
5% \$10,001 - \$25,000		\$ -
over \$25,000 negotiable not to exceed 5%		\$ -

Subtotal B - Overhead & Profit: \$ - **B**

C. Sales Tax (6% x (A.2 + A.3)) \$ - **C**

D. Labor Burden % x A.1 \$ - **D**

Must provide back-up to substantiate Labor Burden Rate

E. <u>Subcontractor Cost</u>		
Subcontractor Cost (Provide detailed breakdown on separate form)		\$ -
Allowable Prime Contractor Mark-Up (5% of Subcontractor Cost)		\$ -
Subtotal E - Subcontractor Cost:		\$ - E

F. Subtotal (A+B+C+D+E) \$ - **F**

G. Bond (1% of F) \$ - **G**

H. TOTAL COST = F + G \$ -