

MARYLAND TRANSPORTATION AUTHORITY
Baltimore, Maryland

REQUEST FOR PROPOSALS (RFP)
PROGRESSIVE DESIGN-BUILD (PDB) SERVICES



**Maryland
Transportation
Authority**

CONTRACT NO. KB-4903-0000

FAP No. AC-ER-115-1(26)N

Issue Date: May 31, 2024

**Francis Scott Key (FSK) Bridge Replacement
I-695/MD 695 over the Patapsco River/Baltimore Harbor**

Anne Arundel County, Baltimore City and Baltimore County

Prospective Offerors who have received this document from a source other than <https://emma.maryland.gov> and wish to assure receipt of any changes or additional materials to the RFP, should immediately log into the eMaryland Marketplace Advantage website for this Solicitation so that amendments or other communications are sent directly to them.

****Disadvantaged Business Enterprises are Encouraged to respond to this Solicitation.****

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**STATE OF MARYLAND
MARYLAND TRANSPORTATION AUTHORITY**

RFP Key Information Summary Sheet

CONTRACT NO.:	KB-4903-0000
eMMA SOLICITATION:	BPM044576
TITLE:	Francis Scott Key (FSK) Bridge Replacement I-695/MD 695 over the Patapsco River/Baltimore Harbor
FACILITY:	Francis Scott Key (FSK) Bridge
COUNTY:	Anne Arundel County, Baltimore City and Baltimore County
ADVERTISED:	May 31, 2024
QUESTIONS DUE DATE:	June 12, 2024, 4:00 PM, local time
PROCUREMENT OFFICER:	Jeffrey Davis, NIGP-CPP, CMPO Phone # 410-537-7832 Fax # 410-537-7801 Email Address: jdavis8@mdta.state.md.us
PROPOSAL ARE TO BE SENT TO:	Maryland Transportation Authority - Division of Procurement ATTN: BID BOX 2310 Broening Highway, 1 st Floor - Baltimore, MD 21224
PROPOSAL DUE DATE & TIME:	June 24, 2024, 4:00 PM, local time
DBE PARTICIPATION GOAL FOR PHASE 1 SERVICES:	Twenty-Six Percent (26%)
PROJECT TIME:	365 Calendar Days from Notice to Proceed
PROPOSAL DOCUMENTS:	RFP documents can be downloaded from https://emma.maryland.gov . Any questions regarding this website, please contact the eMaryland Marketplace Advantage Help Desk at 410-767-1492.



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Notice To Vendors

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

Title: Francis Scott Key (FSK) Bridge Replacement
I-695/MD 695 over the Patapsco River/Baltimore Harbor

Contract No: KB-4903-0000

- 1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
() Other commitments preclude our participation at this time.
() The subject of the solicitation is not something we ordinarily provide.
() We are inexperienced in the work/commodities required.
() Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
() The scope of work is beyond our present capacity.
() Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
() We cannot be competitive. (Explain in REMARKS section.)
() Time allotted for completion of the Proposal is insufficient.
() Start-up time is insufficient.
() Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
() Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
() Disadvantaged Business Enterprise (DBE) requirements. (Explain in REMARKS section.)
() Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
() Payment schedule too slow.
() Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.).

REMARKS: _____

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____



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Offeror Minimum Qualifications

Note: Refer to GI-1.4 for listing of project specific Abbreviations and Definitions.

- 1) The Design-Builder shall submit for review, documentation demonstrating the qualifications of individuals and/or companies being proposed for each Key Staff Position. This documentation and information shall be submitted with the Technical Proposal of this RFP.
- 2) The Design-Builder shall utilize the Key Staff and vendors identified in their Technical Proposal to manage the project throughout the Phase 1 – Project Development services and Phase 2 – Project Delivery services. Substitutions and removals of Key Staff may occur only with written consent of MDTA in accordance with the provisions of this RFP. Refer to Section GI-1.25.
- 3) All Key Staff who are required to be a licensed Professional Engineer (“PE”) do not have to be a licensed PE in the State of Maryland at the time of submission of Proposals must provide proof of a PE licensure in the State of Maryland within 60 days of notice of selection. Offerors are advised to begin the Maryland PE licensure process prior to submission of Proposals.
- 4) The Design-Builder shall provide the following Key Staff in order to perform the work specified in the Contract:
 - a) Design-Build Project Manager (DBPM) – Shall have a minimum of fifteen (15) years of demonstrated experience in construction and managing construction of projects with similar size, scope, type of work, and complexity as this Project. Emphasize Design-Build (DB) experience and extensive project management experience. The proposed DBPM must be an employee of the Lead Principal Participant. This individual shall be responsible for the overall Project design and construction quality assurance activities and shall have the necessary expertise and experience to supervise and exercise control of the Work. The individual should be capable of and be responsible for answering questions and inquiries relevant to the Project. The DBPM shall be responsible for meeting the Design-Builder’s obligations under the Contract and avoiding and resolving disputes.
 - b) Design Manager (DM) – Shall be a licensed PE and shall have a minimum of fifteen (15) years of demonstrated experience in managing design of infrastructure projects of similar size and scope as this Project. The DM should have experience on DB projects. The proposed DM must be an employee of the Designer. The DM shall oversee individual design disciplines, including interdisciplinary coordination, and ensure the overall Project design conforms to the Contract documents. The DM shall establish and oversee a quality assurance program for all disciplines involved in the design of the Project, including, review of design, working plans, shop drawings, specifications, and constructability of the Project. The DM shall have the expertise and experience required to supervise and exercise control of design and construction phases. The DM is responsible for engineering decisions about work product(s). The DM’s role should be fully integrated among the Project team including specialty subcontractors and subconsultants. The DM shall have direct involvement, supervision or control of engineering decisions about the Project. The DM shall be capable of answering questions or inquiries about engineering decisions relating to design and/or Construction; and must demonstrate knowledge of and proficiency in these areas. The DM shall communicate regularly with the MDTA and shall be vested with the authority to act on behalf of Design-Builder provide hold points if warranted. The DM shall ensure that engineering services are either performed by qualified, licensed professionals or supervised by such qualified professionals. The plans must be signed and sealed by such qualified professionals.



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- c) Construction Manager (CM) – Shall be a Certified Construction Manager (“CCM”) through the Construction Management Association of America (CMAA) or licensed as a PE, except for as provided in the following sentence, and shall have a minimum of ten (10) years of demonstrated construction experience in civil works projects with specific experience in managing the site work of large, complex construction projects. In the event the individual does not possess a CCM credential or is not a licensed PE, an additional four (4) years of experience is required, resulting in a minimum of fourteen (14) years of demonstrated construction experience in civil works projects with specific experience in managing the site work of large, complex construction projects. This individual will be required to be on the Project Site for the duration of construction operations and shall be responsible for managing the construction process, to ensure the Materials used and work performed meet Contract requirements and the Quality Assurance Plan. Experience should include work similar to the Project, Critical Path Method Scheduling/Analysis, and should include DB, constructability, public engagement and coordination with stakeholders, and environmental sensitivity.
- d) Project Quality Manager (PQM) – Shall be licensed as a PE and shall have a minimum of fifteen (15) years of demonstrated experience in quality assurance and quality control activities, including preparation and implementation of Quality Assurance Plans and procedures for design and construction. The PQM must work for the Design-Builder under the direct supervision of an executive officer above the level of and under a line of authority independent of the DBPM. The individual must have the ability to initiate or direct corrective actions and provide hold points for design operations and construction operations at any time at the individual’s sole discretion.
- e) Long Span/Complex Bridge Engineer (LSCBE) – Shall be licensed as a PE and shall have a minimum of fifteen (15) years of demonstrated experience in the analysis, design, condition inspection, evaluation, and rehabilitation of long span and complex bridges. He or she preferably should also have experience with cable stayed or supported structures, bridge fatigue and fracture mechanics, vulnerability assessments of structures, expertise with the aerodynamics of bridges, expertise in bridge scour and deep foundation systems, and instrumentation, testing and health monitoring of structures.
- f) Vessel Collision Protection Design Manager (VCPDM) – Shall be licensed as a PE and shall have a minimum of ten (10) years of demonstrated experience in construction engineering, analysis and design of protection systems for vessel collision, including projects of similar size, type of work, and complexity as this Project. The VCPDM shall have demonstrated experience with the analysis and design necessary to protect the bridge piers from vessel collisions.
- g) Bridge Erection and Removal Manager (BERM) – Shall be licensed as a PE, and shall have a minimum of ten (10) years of demonstrated experience in bridge erection and construction engineering, analysis and design, including projects of similar size, type of work, and complexity as this Project. The BERM shall have demonstrated experience with the analysis and design necessary to support the handling and erecting bridge elements, the use of complex and heavy bridge construction equipment, the installation and supports for foundation structures in deep water, installation of temporary supports, shoring and falsework systems, installation of safety protection systems and shielding, and the safe demolition, dismantling and removal of existing complex structures, including existing bridges with condition deficiencies.



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- h) Geotechnical Design Manager (GDM) – Shall be licensed as a PE, and shall have a minimum of fifteen (15) years of demonstrated experience including planning and overseeing subsurface exploration and testing programs for bridge structures and roadways, including projects of similar size, type of work, and complexity as this Project, and projects with long water/river crossing bridge replacements; development of soil/rock profiles for the purpose of geotechnical analysis, design, and construction; design of structural foundations water and earth support structures; analysis and design for static and dynamic (including seismic) loading under current Load and Resistance Factor Design (LRFD); analysis and design of mitigation measures for embankment settlement and stability; analysis and design of both temporary and permanent earth support structures; interpreting geotechnical instrumentation programs; and pavement design. The GDM will be responsible for material characterization, geotechnical design of the retaining walls, foundations, soil and rock cut and fill slopes, embankment materials and construction, required ground improvement, geotechnical instrumentation and pavement subgrade and structure.
- i) Environmental Compliance Manager (ECM) – Shall have a minimum of fifteen (15) years of demonstrated experience in environmental compliance, environmental mitigation design, permitting and construction management on transportation projects in environmentally sensitive areas. The ECM shall have experience with Maryland environmental regulations, Section 404/401 of the Clean Water Act, Maryland Reforestation Law Requirements, Section 4(f) of the Department of Transportation Act, and the National Environmental Policy Act (NEPA). The ECM shall have experience working cooperatively and effectively with design engineers, construction staff, and resource and regulatory agencies. The ECM should have experience managing mitigation designs, plans and obtaining agency approval for stream and wetland mitigation projects that are of similar scope and complexity as this project. The individual's experience should emphasize Design-Build experience, and knowledge of erosion and sediment control; wetlands/waterways; natural and cultural resources; rare, threatened and endangered species; permitting compliance including identification and implementation of mitigation requirements; and monitoring environmental commitments for projects.
- j) Intelligent Transportation Systems (ITS) Design Manager (ITSDM) – Shall be licensed as a PE and shall have a minimum of fifteen (15) years of demonstrated experience in design of various ITS devices (such as lane use signal, cameras/CCTV, License Plate Reader (LPR), Dynamic Message Sign (DMS), Road Weather Information System (RWIS), etc.) on bridge and highway projects of similar scope and complexity as this Project. ITSDM should also be knowledgeable with conduits, fibers, systems integration, and communications networks. Experiences with systems engineering elements like concept of operations, functional requirements, traceability matrices, detailed specifications, reports, and related documents for compliance with standard system engineering approaches is also required. Additional experience leading projects in Manual on Uniform Traffic Control Devices (MUTCD) and Maryland MUTCD (MDMUTCD) compliant design and performing traffic analysis and simulations is desired.
- k) Cost Estimator – Shall have a minimum of fifteen (15) years of experience as a Cost Estimator working for highway and bridge construction projects. This position will be responsible for developing Opinion of Probable Construction Cost (OPCCs) and Guaranteed Maximum Price (GMPs) and participating in key meetings where price, risk, trade involvement, and assumptions are discussed. Demonstrate relevant experience as a lead Cost Estimator including experience in current local Construction pricing, experience in developing “take off” quantities, experience in involving local and minority trade labor, and experience in identifying and mitigating project risk.



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- l) Civil Rights and Fair Practices Officer (CRFPO) – Shall have a minimum of ten (10) years of demonstrated experience in managing and administering federal Disadvantaged Business Enterprise (DBE) programs. This individual will be responsible for assuring compliance with state and federal labor laws, and DBE program requirements, including outreach, targeted hiring in high unemployment areas, investigating workplace complaints, reporting, etc. This person will be responsible for recommending corrective actions and will be the point of contact with MDTA for issues about labor, DBE program and relevant subcontractor issues. This person shall directly report to the Design-Build Project Manager.

- m) Independent Design Quality Manager Director (IDQMD) – Shall be a Licensed PE and shall have a minimum of fifteen (15) years of demonstrated experience in the analysis and design of highways and bridge structures. The IDQMD shall be an employee of the IDQM Firm. This individual shall be responsible for leading the independent analysis of major structural components throughout the contract duration. Emphasize experience on long span bridges, bridges, retaining structures, highway design, stormwater management, erosion and sediment control, drainage structures, and projects of similar size and type.

- n) Project Controls Engineer (PCE) – Shall be a Licensed PE and have a minimum of ten (10) years of demonstrated experience managing project scheduling, costs, documents and reporting activities, and at least five (5) of those years of demonstrated experience working for highway and bridge projects. This individual shall be responsible for leading the development, maintenance and monitoring of the Phase 1 Work Order schedules, schedules for all Phase 2 packages, identification and evaluation of risk and impacts within schedules for both phases, and participating in key meetings where project controls and schedule are discussed. The PCE should have experience on DB projects.

- 5) Team Past Performance – Principal Participants and Designer of the Design-Builder shall have relevant project experience with design and/or construction of major highway bridge elements. Specific documentation and information shall be submitted with the Technical Proposal of this RFP. Refer to Section 2.3 of this RFP for additional information on submittal requirements.



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SECTION 1 - GENERAL INFORMATION

GI - 1.1 Summary Statement

- 1) The Maryland Transportation Authority (“MDTA”) is an agency of the State of Maryland (“State”), which finances, operates and maintains a system of toll facilities and other transportation services for public use and convenience. The MDTA is responsible for the operation and maintenance of the Fort McHenry Tunnel (FMT), the Baltimore Harbor Tunnel (BHT) Thruway, the Francis Scott Key (FSK) Bridge, the Thomas J. Hatem (TJH) Memorial Bridge, the Governor Harry W. Nice Memorial/Senator Thomas “Mac” Middleton Bridge (HWN), the John F. Kennedy (JFK) Memorial Highway, the Millard E. Tydings (MET) Memorial Bridge, the William Preston Lane, Jr. (WPL) Memorial Bridge (Bay Bridge), the Intercounty Connector (ICC) and the Express Toll Lanes (ETL). The MDTA's source of funds for maintenance, operations, and capital improvements is separate from Maryland's Transportation Trust Fund. The MDTA is governed by a Board consisting of eight citizens appointed by the Governor with the consent of the State Senate, and serves as the policy-setting, decision-making and governing body. The Secretary of Transportation serves as the Chairman of the MDTA Board.
- 2) The MDTA is seeking the services of a qualified Design-Builder for a Design-Build (DB) Contract as defined in the *Code of Maryland Regulations (COMAR) 21.05.11* and *Title 23, Code of Federal Regulations (CFR), Part 636* to undertake the complete design and construction of Francis Scott Key Bridge Replacement. The Contract will be procured using the “Competitive Sealed Proposals” procurement method, as defined in *COMAR 21.05.03*.
- 3) This Contract will utilize a Progressive Design-Build process that will form a partnership between MDTA and the Design-Builder with the goals of mitigating risk, streamlining the design process, improving the decision-making process with better information, and developing a project that best meets the goal of the Project. The early involvement of the Design-Builder will help reduce errors in design, maximize the overall constructability of the project, and maximize achievement of the Project goals. Work in the Progressive Design-Build process will advance in two phases: Phase 1 – Project Development services and Phase 2 – Project Delivery services. There may be multiple Phase 2 packages that are developed during the Phase 1 services to be implemented with separate GMPs during Phase 2. Refer Section GI -1.3 for the Project description and Section 2.1 for the detailed scope of the Project.
- 4) The MDTA intends to award one (1) Contract as a result of this RFP.
- 5) Offerors, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Design-Builder) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

GI - 1.2 Specifications

- 1) Engineering codes and standards, including those of the various Federal, State, and local jurisdictions where the Project is located, shall be applicable to the Project elements including, among others the current edition of the Maryland Department of Transportation (MDOT) State Highway Administration (SHA) Standard Specifications for Construction and Materials as of the publication of this RFP and future editions published prior to development of specifications for each Phase 2 work package, the “standard” Special Provisions, the Special



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Provisions Inserts, and all provisions included in the RFP. You can access the SHA's Standard Specifications for Construction and Materials at the following web site link: www.roads.maryland.gov.

- 2) Price adjustments for construction items included in the SHA Standard Specifications for Construction and Materials and the price adjustment special provisions in the attachments to this RFP will be applicable to Phase 2 work.
- 3) Guidelines and references typically used by MDTA are included in Attachment P and may be applicable to this Contract. This list is not considered exhaustive and other design guidelines may be identified as the project progresses. This Project shall be designed using Interstate Standards as noted at the web site link: <https://www.fhwa.dot.gov/design/standards/181105.cfm>. Use the most current version of each listed guidelines and references, including updated memos, notes, revision, amendments, etc. as of the initial publication date of this RFP. The Design-Builder may propose other guidelines and references for MDTA's consideration to be utilized on this Contract. Any guideline or reference proposed should be approved for usage by AASHTO, other state transportation agencies, or have been developed through organizations such as, but not limited to, the Transportation Research Board. It is the Design-Builder's responsibility during Phase 1 to identify and resolve with MDTA any conflicts with the guidelines and references to ensure all design requirements included in Phase 2 packages are clear and in compliance with all applicable state and federal requirements.
- 4) Disadvantaged Business Enterprise (DBE) goals, Davis-Bacon Heavy Construction prevailing wage rates at the time of GMP submission, and persons to be trained, if any, will be provided for all Phase 2 packages prior to the submittal of any Guaranteed Maximum Price (GMP) package by the Design-Builder. Appropriate specifications will be provided with each Phase 2 package prior to submission of the GMP.
- 5) All reference to the SHA's offices and/or positions shall be construed to mean MDTA's corresponding offices and/or positions. Prior to any submittal or contact specified, the Design-Builder shall have the Design-Build Project Manager verify that the current office and/or position are shown in the specifications. The MDTA will not be responsible for any loss resulting from the Design-Builder not verifying the current office and/or position.

GI – 1.3 Project Description

Note: Refer to RFP Section GI-1.4 for listing of project specific Abbreviations and Definitions.

- 1) This solicitation is for a Progressive Design-Build Contract. Work on this Contract will advance in two phases: Phase 1 – Project Development services and Phase 2 – Project Delivery services as further described in Section GI – 2.1.
- 2) Project Description and Project Goals
 - a. Project Description

The Francis Scott Key Bridge (FSK) was a 1.7-mile-long bridge on I-695/MD 695 spanning the navigable Patapsco River providing a critical connection to the Port of Baltimore. I-695/MD 695 is a fully access controlled highway, forming the southeastern section of the beltway loop around Baltimore City. FSK was a divided four-lane typical section with two lanes in each direction and was on the National Highway System (NHS). Pier 17 was one of the four supports of the continuous through truss spans of the FSK bridge.



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On March 26, 2024, the M/V DALI while transiting out of Baltimore Harbor struck Pier 17 of FSK., and upon impact, FSK collapsed into the Patapsco River within a few seconds of the collision. The collapsed spans include the 1,200-foot main span over the navigation channel and the two adjacent truss spans each of 720 feet in length. The length of the collapsed truss spans is about 2,644 feet. In addition, a few girder spans also collapsed. The collapse rendered the highway and ship channel impassable.

This Project will replace the FSK Bridge and approaches. Refer to Section 2.1 for additional information on the National Environmental Policy Act (NEPA) process and the Progressive Design-Build process. MDTA desires to remove the existing portions of bridge structure still standing as early as practicable, permissible, and approvable as an early work package and an amendment of this contract.

b. Goals

1. COLLABORATION

Build strong partnerships with all project team members throughout Phase 1 and Phase 2, including overall coordination, open communication, and safety and risk management. Achieve a collaborative and integrated partnership between all project team members with local communities and stakeholders. Establish ongoing and inclusive communication on partnering opportunities available to the contracting community and small and disadvantaged businesses.

2. SCHEDULE

Complete the bridge design as quickly as possible using an aggressive delivery schedule, so construction can commence as soon as possible. With a goal of opening all lanes to vehicular traffic no later than October 15, 2028. During Phase 2, we anticipate incentives will be offered for earlier completion. Work activities shall be sequenced and performed to minimize impacts to shipping access to the Port of Baltimore and shall adhere to local noise ordinances to avoid violations and disturbances to surrounding communities.

3. SAFETY

Provide a safe and secure project throughout Phase 1 and Phase 2, with zero fatalities or serious injuries to workers. Safe passage of all port and maritime traffic through the project site shall be maintained for the duration of the project in collaboration with federal, state and local agencies having jurisdiction.

4. QUALITY

Integrate high quality design, materials, construction and operational aspects to deliver a resilient and aesthetically pleasing bridge exceeding the 75-year service life requirements.

5. COST

Provide cost-effective Phase 1 services in a manner that provides transparency in cost estimating and negotiation. Deliver Phase 2 of the project at or below the negotiated budgets while minimizing life cycle costs and providing transparency in cost estimating.

6. AESTHETICS

Design and construct a visually attractive structure that minimizes the number of piers in the Patapsco River and serves as the gateway to Baltimore City and Port of Baltimore.



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- c. During Phase 1, Project Labor Agreements (PLA) are neither an evaluation factor nor requirement. For Offeror's awareness, see [Executive Order 01.01.2024.18](#) and FHWA's [Interim Guidance on the use of Project Labor Agreements](#). MDTA will be evaluating whether to require a PLA for Phase 2 of this Project, subject to FHWA approval. A Phase 2 PLA (if any) shall fully conform to all relevant statutes, regulations and executive orders, including Governor Wes Moore's [Executive Order 01.01.2024.18](#) and FHWA's [Interim Guidance on the use of Project Labor Agreements](#). If a PLA is not utilized, the Design-Builder shall work with MDTA to include workforce development opportunities for the construction trades.

GI - 1.4 Abbreviations and Definitions

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

1) Project Specific Abbreviations and Definitions:

- a. **Design-Builder** – The Offeror selected pursuant to the RFP that enters into the Contract with the MDTA to design and construct the Project.
- b. **Designer** – The qualified, licensed design professional engineering firm(s) working for the Design-Builder. The Design-Builder must have qualified, licensed Design Professionals, as such term is defined in *COMAR 21.05.11.01*, to furnish design services required under the Contract Documents.
- c. **Guaranteed Maximum Price (GMP)** –
- The total itemized dollar amount agreed upon between the Design-Builder and the MDTA for the Cost of a Phase 2 package of the Project excluding the Phase 1 services. It shall include all permitting, Final Design, Construction, labor, equipment and materials and all incidentals necessary to complete the Phase 2 package for the Project.
 - The GMP amount that will be incorporated into the Contract amendment for Phase 2 will be agreed to between MDTA and the Design-Builder. A GMP is the sum of the Cost of the Phase 2 package agreed upon with pay items and assumptions. The Phase 2 package of the Project will be paid through an agreed upon work breakdown structure.
 - MDTA expects to initiate GMPs for a Phase 2 package based on 50% or greater preliminary plans, reports, and performance requirements developed by Design-Builder during Phase 1. Multiple Phase 2 package GMPs may be developed and accepted for Phase 2 of this Project but must be consistent with FHWA guidance on fundable incremental improvements, and subject to FHWA approval and/or concurrence. MDTA reserves the right not to award any part(s) or all of the Phase 2 packages. The Design-Builder shall deliver to MDTA a proposed GMP and supporting documents for an appropriate Long Lead Time Procurement (LLTP) or a Phase 2 package.
 - Except for Change Orders approved by MDTA, a GMP will not be increased. The Design-Builder assumes all risk with performance of the work, including management of its Subcontractors, suppliers, and any associated cost impacts over and above a GMP.
 - A GMP proposal can be offered up to three times for any Phase 2 package. After the third and final attempt at a GMP acceptance, MDTA reserves the right to deliver the work by other means.
 - MDTA may consider establishing a risk sharing pool with the Design-Builder during Phase 1 that, if adopted, would be incorporated into the Contract. The purpose of the risk sharing pool is to develop a budget for items foreseen at the time of submitting a GMP, but not detailed enough for inclusion in the GMP. Any and all items fitting this category will be identified separately from the GMP and will be monitored for progress and cost. The actual process will be agreed upon as part of the Contract amendment for the Phase 2 package.
- d. **Independent Cost Estimator (ICE)** -- An independent party will be procured by the MDTA to prepare a series of detailed cost estimates to perform the Phase 2 Services and Early Work and other incidental cost estimating tasks. These estimates will be performed independent of the Design-Builder and the MDTA and



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will be used as a basis for cost comparison to the Opinion of Probable Construction Cost and the Guaranteed Maximum Price.

- e. **Independent Design Quality Manager (IDQM) Firm** – An entity retained by the Design-Builder that will review all design elements to ensure compliance with the Contract requirements and the Design-Builder’s Quality Plan. This is in addition to the Designer’s own internal quality control and assurance procedures. The IDQM Firm signing and certifying compliance with the Contract requirements must hold the same Professional Licensure, applicable certifications, trainings, etc., as required of the Designer. The IDQM shall have no contractual relationship with the Designer pertaining to this Project.
 - f. **Lead Principal Participant** – The firm that is designated by the Offeror as having the lead responsibility for managing the Offeror’s entity or organization.
 - g. **Long Lead Time Procurement (LLTP)** – The Design-Builder may be asked to procure long lead materials that may be in short supply or require longer than desired lead times from purchase to delivery.
 - h. **Opinion of Probable Construction Cost (OPCC)** -- The actual Construction cost to the Design-Builder to build all aspects of the Project or a Phase 2 package. These are required at established milestones for the Project and for each Phase 2 package but are not binding cost estimates.
 - i. **Principal Participant** – A legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory to the Contract with the MDTA. Principal Participant(s) will be required to accept joint and several liabilities for performance of the Contract. Principal Participants are not Design Subconsultants, construction Subcontractors or any other Subcontractors to the legal entity that signs the Contract.
- 2) General Abbreviations and Definitions:
- a. **Business Day(s)** – The official days of the week to include Monday through Friday excluding State Holidays (see definition of “Normal State Business Hours” below).
 - b. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
 - c. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. A sample Contract will be substantially in the form of **Attachment A**.
 - d. **Contract Commencement** - The date the Contract is signed by the MDTA following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
 - e. **Contract Manager** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring DBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
 - f. **Department or MDTA** – Maryland Transportation Authority.
 - g. **Disadvantaged Business Enterprise (DBE)** – As defined in 49 CFR Part 26. For the purposes of this Project, all DBEs must be MDOT certified as demonstrated on the DBE Forms to be submitted in conformance with the RFP requirements.
 - h. **eMMA** – eMaryland Marketplace Advantage.
 - i. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
 - j. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
 - k. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
 - l. **Offeror** – An entity that submits a Proposal in response to this RFP.



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- m. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Design-Builder
- n. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Price Proposal.
- o. **Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Transportation Authority, including any addenda.
- p. **State** – The State of Maryland.
- q. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Price Proposal with Attachment G – Schedule of Prices, and used in the financial evaluation of Proposals.
- r. **BPW**- The Maryland Board of Public Works.
- s. **POC**- Point of Contact- An MDTA Official at each facility that provides the Design-Builder with appropriate access to the site and approves his/her entry to the facility.
- t. **BHT** – Baltimore Harbor Tunnel
- u. **FSK** – Francis Scott Key Bridge
- v. **FMT** – Fort McHenry Tunnel.
- w. **HWN** – Governor Harry W. Nice Memorial/Senator Thomas “Mac” Middleton Bridge
- x. **ICC** - Intercounty Connector (ICC)/MD 200
- y. **JFK** – John F. Kennedy Memorial Highway (Northern Region Facilities)
- z. **TJH** – Thomas J. Hatem Memorial Bridge
- aa. **WPL** - William Preston Lane Jr. Memorial (Bay) Bridge

GI - 1.5 Contract Type

The Contract resulting from this solicitation shall be a Design-Build (DB) Contract as defined in the *Code of Maryland Regulations (COMAR) 21.05.11* and *Title 23, Code of Federal Regulations (CFR), Part 636*.

GI - 1.6 Project Term

- 1) The Contract time for Phase 1 is 365 calendar days from Notice to Proceed. Upon execution of the Contract amendment for a Phase 2 package, the completion date of the overall Contract will be amended to account for the completion of the Phase 2 package.
- 2) Any delay in awarding or the execution of the Contract will not be considered a basis for a monetary claim, however, only an extension of time may be considered by the MDTA, if warranted.



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GI - 1.7 Procurement Officer

- 1) The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Jeffrey Davis, NIGP-CPP, CMPO
Division of Procurement
Maryland Transportation Authority
2310 Broening Highway
Baltimore, MD 21224
E-mail: jdavis8@mdta.state.md.us
Phone No.: 410-537-7832
Fax No.: 410-537-7801

- 2) The MDTA may change the Procurement Officer at any time by written notice to the Design-Builder.

GI - 1.8 Contract Manager

- 1) The Contract Manager monitors the daily activities of the Contract and provides guidance to the Design-Builder. The MDTA Contract Manager is:

Brian Wolfe, PE
Office of Engineering and Construction
Maryland Transportation Authority
8019 Corporate Drive, Suite F
Nottingham, MD 21236
E-mail: bwolfe3@mdta.state.md.us
Phone No.: 410-537-8200
Fax No.: 410-537-8249

- 2) The MDTA may change the Contract Manager at any time by written notice to the Design-Builder.

GI - 1.9 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will not be held for this solicitation.

GI - 1.10 eMarylandMarketplace Advantage (eMMA)

- 1) eMMA is the electronic commerce system for the State of Maryland. The RFP, questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 2) In order to receive a Contract award, an Offeror must be registered on eMMA. Registration is free. Go to <https://emma.maryland.gov/>, click on "Register" to begin the process, and then follow the prompts.

GI - 1.11 Questions & Inquiries

- 1) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: mdtaprocurement@mdta.state.md.us with a copy to jdavis8@mdta.state.md.us Please identify in the subject line the Solicitation Number and Title.



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- 2) Questions are requested to be submitted by June 12, 2024, 4:00 PM, local time. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.
- 3) All questions and responses will be published as an Addendum to the solicitation on eMMA.
- 4) Offerors should receive an automatic electronic confirmation email from the MDTA Procurement mailbox once the question is received. If a bidder does not receive an email confirmation, please contact the Procurement Officer immediately. If a bidder does not receive an automatic electronic confirmation email and does not immediately contact the Procurement Officer, MDTA will not be able to accept questions after the question due date, provide answers to questions received after the question due date, or extend the bid due date because of questions not received.

GI - 1.12 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under *COMAR 21.05.03*.

GI - 1.13 Proposals Due (Closing) Date and Time

- 1) Proposals, in the number and form set forth in Section 2.2 must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 2) Requests for extension of this date or time shall not be granted.
- 3) Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in *COMAR 21.05.03.02.F* and *COMAR 21.05.02.10*, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4) The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.
- 5) Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 6) Proposals may not be submitted by e-mail. Proposals will not be opened publicly.
- 7) Potential Offerors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

GI - 1.14 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.



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GI - 1.15 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's Proposal to meet the requirements of this RFP.

GI - 1.16 Public Information Act Notice

- 1) The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Price Proposal.
- 2) Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

GI - 1.17 Award Basis

The Contract shall be awarded to the responsive and responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see *COMAR 21.05.03.03F*), for providing the goods and services as specified in this RFP.

GI - 1.18 Oral Presentation

Oral presentations will not be held.

GI - 1.19 Duration of Proposal

Offers submitted in response to this RFP are irrevocable for the latest of the following: 90 days following the Proposal due date and time, best and final offers if requested or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

GI - 1.20 Revisions to the RFP

- 1) If the RFP is revised before the due date for Proposals, the MDTA shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 2) Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Cover Letter accompanying the Offeror's Technical Proposal.
- 3) Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4) Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.



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- 5) Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

GI - 1.21 Cancellations

- 1) The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 2) The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 3) In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with *COMAR 21.01.03.01.A(4)*.

GI - 1.22 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

GI - 1.23 Protest/Disputes

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

GI - 1.24 Offeror Responsibilities

- 1) Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 2) If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 3) A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

GI - 1.25 Substitution of Personnel



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A. Continuous Performance of Key Staff

Unless substitution is approved per paragraphs B-D of this section, Key Staff shall be the same personnel proposed in the Design-Builder's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Staff shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Staff may not be removed by the Design-Builder from working under this Contract, as described in the RFP or the Design-Builder's Technical Proposal, without the prior written approval of the Contract Manager. Removal or substitution of Key Staff without prior written approval by the Contract Manager may result in Liquidated Damages under Section 38 of the Contract (Liquidated Damages – Unauthorized Removal of Key Staff).

If the Contract is task order based, the provisions of this section apply to Key Staff identified in each task order proposal and agreement.

B. Definitions

For the purposes of this section, the following definitions apply:

Extraordinary Personal Circumstance – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

Incapacitating – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Design-Builder's Technical Proposal.

Sudden – means when the Design-Builder has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Staff working under the Contract.

C. Key Staff General Substitution Provisions

The individuals identified as the Key Staff personnel holding the positions of DBPM, PM, CM, PCE and LSCBE shall perform their duties and responsibilities throughout the life of the contract and the Design-Builder shall not submit these positions for Voluntary Key Staff Replacement as defined below. The Design-Builder's attempt to voluntarily replace these Key Staff positions shall entitle MDTA to assess Liquidated Damages in the amount of \$250,000 for each Key Staff position. The Design-Builder shall not remove or substitute any of the DBPM, PM, CM, PCE or LSCBE Key Staff or allow a position to remain vacant unless approved in writing by MDTA.

Design-Builder and MDTA acknowledge that it is impracticable and extremely difficult to determine the actual Losses that would accrue to MDTA in the event of such unavailability of Key Staff. Design-Builder understands and agrees that any Liquidated Damages payable under this section are not a penalty and that such sums are reasonable under the circumstances existing as of the Notice of Award. The Liquidated



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Damages under this section are intended to fix and limit the Design-Builder's costs and to avoid later disputes over the amount of damages MDTA has suffered and are properly attributable to the Design-Builder.

The following provisions apply to all of the circumstances of Key Staff substitution described in paragraph D of this section.

1. The Design-Builder shall demonstrate to the Contract Manager's satisfaction that the proposed substitute Key Staff have qualifications at least equal to those of the Key Staff for whom the replacement is requested.
2. The Design-Builder shall provide the Contract Manager with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Manager may request additional information concerning the proposed substitution. In addition, the Contract Manager and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Manager will notify the Design-Builder in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager will not unreasonably withhold approval of a requested Key Staff replacement.

D. Replacement Circumstances

1. Voluntary Key Staff Replacement

To voluntarily replace any Key Staff, the Design-Builder shall submit a substitution request as described in paragraph C of this section to the Contract Manager at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Manager approves the substitution in writing.

2. Key Staff Replacement Due to Vacancy

The Design-Builder shall replace Key Staff whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Staff Replacement as per Section D.1 of this section.).

Under any of the circumstances set forth in this paragraph D.2, the Design-Builder shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Design-Builder first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Key Staff Replacement Due to an Indeterminate Absence



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If any Key Staff has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Design-Builder shall identify a suitable replacement and provide the same information or items to the Contract Manager as required under paragraph C of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Manager, at the option and sole discretion of the Contract Manager, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

4. Directed Personnel Replacement

- a. The Contract Manager may direct the Design-Builder to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Manager determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Manager may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Design-Builder shall, in accordance with paragraph C of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Manager, the Contract Manager shall give written notice of any personnel performance issues to the Design-Builder, describing the problem and delineating the remediation requirement(s). The Design-Builder shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Manager. If the Contract Manager rejects the Remediation Plan, the Design-Builder shall revise and resubmit the plan to the Contract Manager within five (5) days, or in the timeframe set forth by the Contract Manager in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Manager will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Staff at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.



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GI - 1.26 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, a sample of which is attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Cover Letter of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The MDTA reserves the right to accept or reject any exceptions.**

GI - 1.27 Bid/Proposal Affidavit

A Proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this RFP.

GI - 1.28 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

GI - 1.29 Compliance with Laws/Arrearages

- 1) By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the Contract.
- 2) By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

GI - 1.30 Verification of Registration and Tax Payment

- 1) Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.
- 2) It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

GI - 1.31 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- 1) In connection with a procurement contract a person may not willfully:
 - a) Falsify, conceal, or suppress a material fact by any scheme or device;
 - b) Make a false or fraudulent statement or representation of a material fact; or



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- c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 2) A person may not aid or conspire with another person to commit an act under subsection (1) of this section.
- 3) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

Offerors are also advised to refer to the false statement provisions in the FHWA-1273 in the appendix.

GI - 1.32 Payments by Electronic Funds Transfer

By submitting a response to this RFP, the Offeror agrees to accept payments by electronic funds transfer unless the MDTA grants an exemption. The selected Offeror shall register using the Maryland Transportation Authority Vendor Electronic Funds Transfer (EFT) Registration Request Form. Any request for exemption must be submitted to the MDTA's Office of Finance for approval at the address specified on the EFT Registration Request Form and must include the business identification information as stated on the form and the reason for the exemption.

GI - 1.33 Prompt Payment Policy

This Contract and all subcontracts issued under this Contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and *COMAR 21.10.08*. In §§A—D, the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in *COMAR 21.10.08.01*. A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress, semi-final, or final payment for work under this contract. If a contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with *COMAR 21.10.08*. A contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and *COMAR 21.10.08*. The Contractor shall incorporate by reference or otherwise include these General Provisions in every subcontract issued pursuant to or under this Contract, and shall require that the same reference or inclusion be contained in every subcontract entered into by any of its subcontractors.

GI - 1.34 Electronic Procurements Authorized

- 1) Under *COMAR 21.03.05*, unless otherwise prohibited by law, the MDTA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 2) Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 3) "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emma.maryland.gov>), and electronic data interchange.



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- 4) In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in *COMAR 21.03.05*:
- a) The Procurement Officer may conduct the procurement using eMMA to issue:
 - i) the RFP;
 - ii) any amendments;
 - iii) Pre-Proposal meeting documents;
 - iv) questions and responses;
 - v) communications regarding the RFP or Proposal to any Offeror or potential Offeror; and
 - vi) notices of selection or non-selection
 - b) An Offeror or potential Offerors may use e-mail or facsimile to:
 - i) ask questions regarding the RFP;
 - ii) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - iii) submit a "Notice To Vendors" response to the RFP.
 - c) The Procurement Officer, the Contract Manager, and the Design-Builder may conduct day-to-day Contract administration, except as outlined in Section 5 of this Subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manager.
- 5) The following transactions related to this RFP and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- a) submission of Proposals;
 - b) filing of Contract Claims or Notices of Claims;
 - c) submission of documents determined by the MDTA to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
 - d) any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Design-Builder or Offeror be provided in writing or hard copy.
- 6) Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Manager.

GI - 1.35 Disadvantaged Business Enterprise Goals

There is a DBE contract goal established for this procurement for Phase 1 – Project Development services. Refer to Attachment D in the Appendix for additional information. Separate DBE contract goals will be determined for Phase 2 – Project Delivery services prior to each Phase 2 amendment, including early work packages, long lead time procurement, and the Guaranteed Maximum Price(s) (GMP). The Design-Builder will be required to submit to MDTA a DBE Open-Ended Performance Plan (OEPP) for and with each Phase 2 Work Package that does not include a substantially complete design and estimate. Performance or specification based Phase 2 packages that include both final design and construction will require the development of an OEPP consistent with FHWA best practices, detailing the Design-Builder's good faith effort to meet the DBE goal established for the Phase 2 package, identifying



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the types of subcontracting work (with projected dollar amounts) that DBEs will be solicited to perform and a projected timeframe in which subcontracts will be executed.

GI - 1.36 Disadvantaged Business Enterprise Forms

Refer to Attachment D for DBE forms.

GI - 1.37 Living Wage Requirements

There is no Living Wage requirement for this procurement.

GI - 1.38 Federal Funding Acknowledgement

This Contract does contain Federal-aid funds.

GI - 1.39 Restrictions on Participation in the Contract

An individual or entity that has received monetary compensation as the lead or prime design consultant under a contract with the MDTA to assist in the development of the National Environmental Policy Act document, as 23 *CFR 636.109* requires these consultants to be under the exclusive direction and control of the contracting agency, or has been retained to perform design review and construction phase services on behalf of the MDTA for this Project, or a person or entity that employs such an individual or entity, or a person or an entity who has received in excess of \$500,000 for services performed for this Project, may not submit a Proposal for this procurement and is not a responsible Offeror under *COMAR 21.06.01.01*. The Proposal from such an individual or entity will be rejected pursuant to *COMAR 21.06.01.01* and *COMAR 21.06.02.03*.

An individual or an entity may not submit more than one Proposal as a Principal Participant or as a joint venture. Also, an entity that responds to this RFP as a Principal Participant, by itself or in a joint venture, may not be included as a designated subcontractor to another firm that responds as a Principal Participant. Multiple responses under any of the foregoing situations may cause the rejection of all responses of the firms involved. The above does not preclude a firm that has not submitted as a Principal Participant from being designated as a subcontractor to more than one (1) Principal Participants responding to this RFP.

The following is a list of consultants, subconsultants, and/or entities that the MDTA has determined to be conflicted and ineligible to participate in any manner whatsoever in connection with this procurement prior to Award, including any involvement in connection with the development, preparation, or submission of a Proposal.

- Johnson, Mirmiran & Thompson or JMT, Inc.,
- WSP USA Inc.,
- Blackwater Environmental Group,
- Prime AE,
- Gannett Fleming,
- Reynolds, Smith and Hills or RS&H,
- Magnitvde LLC,
- Rummel, Klepper and Kahl or RK&K, and
- Whitman, Requardt & Associates or WRA.



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The MDTA makes no representations regarding the completeness of the list. With the exception of the firms listed above, no other firms are known to have restrictions in participating in the Project that is being procured as Design-Build Contract numbered KB-4903-0000 at this time. The list above will be updated as necessary throughout the procurement process. Any and all updates to this list will be provided via Addenda to this RFP.

The Maryland Code, State Finance and Procurement Article, Division II – General Procurement Law, Title 13 – Source Selection–State Procurement Contracts, Subtitle 2 – Procedural Requirements, Part II – Source Selection, § 13-212.1 – Individuals Prohibited from Participating in Procurement, Annotated Code of Maryland, contains various restrictions on participating in State procurements. Any questions regarding eligibility must be immediately brought to the attention of the procurement officer in writing.

No official or employee of the State of Maryland, as defined under the Maryland Code, General Provisions Article, Title 5 – Maryland Public Ethics Law, Subtitle 5 – Conflicts of Interest, Part I – General Provisions, § 5-503 – Employment Restriction-Entities Contracting with the State, Annotated Code of Maryland, whose duties as such official or employee include matters substantially relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, be employed by an entity that is a party to this Contract.

The Design-Builder may not use any persons or firms meeting the above restrictions in any capacity, Key Staff or otherwise, on this DB Contract. It is the responsibility of the Design-Builder to investigate any potential ethics issues and seek an opinion from the Maryland State Ethics Commission or Maryland State Board of Contract Appeals regarding any potential conflicts of interest. The Design-Builder shall provide certification in its Cover Letter that it is in compliance with employment prohibitions and restrictions for the duration of this Contract.

GI - 1.40 Conflict of Interest Affidavit and Disclosure

The Offeror's attention is directed to *23 CFR Section 636 Subpart A* and in particular to *Subsections 636.103 and 636.116* regarding organizational conflicts of interest.

The Offeror is prohibited from receiving advice or discussing any aspect of the Project or the procurement of the Contract with any Person with an organizational conflict of interest, including, but not limited to, the entities identified in GI - 1.39.

By submitting its Proposal, each Offeror agrees that, if an organizational conflict of interest is thereafter discovered, the Offeror must make an immediate and full written disclosure to the Procurement Officer that includes a description of the action that the Offeror has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist in MDTA's view, then MDTA may, at its sole discretion, declare the Offeror non-responsible, rescind the Contract Award, or cancel the Contract. If the Offeror was aware of an organizational conflict of interest and did not disclose the conflict to the MDTA, then MDTA may terminate the Contract for default.

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal. All Offerors are advised that if a Contract is awarded as a result of this RFP, the successful Design-Builder's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment H** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by *COMAR 21.05.08.08*.



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GI - 1.41 Non-Disclosure Agreement

A Non-Disclosure Agreement is not required for this procurement.

GI - 1.42 HIPAA - Business Associate Agreement

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

GI - 1.43 Nonvisual Access

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

GI - 1.44 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

GI - 1.45 Veteran-Owned Small Business Enterprise Goals

There will be no Veteran-Owned Small Business Enterprise (VSBE) goals for this project.

GI - 1.46 Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment I**. The Disclosure must be provided with the Proposal.

GI - 1.47 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement. The requirement to complete a DHR Hiring Agreement may be added by the Procurement Officer for the Phase 2 services of this contract.

GI - 1.48 Small Business Procurement

There will be no small business enterprise goals for this project.

GI - 1.49 Compensation and Method of Payment

- 1) The upset limit established for the Phase 1 – Project Development services inclusive in of the Phase 1 Mark-Up is \$73,000,000.00
- 2) The Design-Builder's compensation for Phase 1 – Project Development services shall be computed as the actual paid direct labor rates for the personnel performing the Phase 1 services multiplied by the hours worked and multiplied by the Phase 1 Multiplier Rate.

The Phase 1 Multiplier Rate includes overtime payments, indirect costs (overhead), travel subsistence, non-salary direct costs and facilities capital cost of money. The Phase 1 Multiplier Rate is 2.5.



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Other actual and documented costs for Phase 1 services will be compensated at actual cost.

The Phase 1 Mark-up, established from the Design-Builder's Price Proposal, will be applied to all compensation for the Phase 1 Work. The Phase 1 Mark-up includes profit, general and administrative costs, and any other costs not specifically included above.

- 3) Payment will be made by Electronic Funds Transfers within thirty (30) days following proper receipt of an approved invoice from the Design-Builder.
- 4) All invoices and/or correspondence pertaining to invoices shall be identified with Contract Number KB-4903-0000 and shall be forwarded to:

Brian Wolfe, PE
Office of Engineering and Construction
Maryland Transportation Authority
8019 Corporate Drive, Suite F
Nottingham, MD 21236
E-mail: bwolfe3@mdta.state.md.us
- 5) All services provided under this Contract shall be billed on a monthly basis in accordance with the prices on the Price Proposal Form.
- 6) The invoice must also include on its face, the Design-Builder's Federal Tax Identification Number.
- 7) All invoices for services shall be signed by the Design-Builder and submitted to the Contract Manager. All invoices shall include the following information:

Design-Builder name;
Remittance address;
Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
Invoice period;
Invoice date;
Invoice number
State assigned Contract number;
State assigned (Blanket) Purchase Order number(s);
Goods or services provided; and
Amount due.
- 8) Invoices submitted without the required information cannot be processed for payment until the Design-Builder provides the required information.
- 9) The invoice must be supported by an hour and cost breakdown and signed payroll reports for each Work Order under the Contract.



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- 10) The MDTA reserves the right to reduce or withhold Contract payment in the event the Design-Builder does not provide the MDTA with all required deliverables within the time frame specified in the Contract or in the event that the Design-Builder otherwise materially breaches the terms and conditions of the Contract until such time as the Design-Builder brings itself into full compliance with the Contract. Any action on the part of the MDTA, or dispute of action by the Design-Builder, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.
- 11) The Design-Builder shall submit invoices in accordance with the following schedule: Invoices are due by the 10th of the month following the month in which services were performed.

GI - 1.50 Confidentiality Agreement

A Confidentiality Agreement is not required for this procurement.

GI - 1.51 Title VI Contract Provisions

The MDTA, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4)* and additional non-discrimination requirements, hereby notifies all Offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

GI - 1.52 Commercial Non-Discrimination Clause

- 1) As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 2) The Design-Builder agrees to include the clause contained in 1), above, in all subcontracts, regardless of the tier.

As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after



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the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

GI - 1.53 Termination for Default

If the Design-Builder fails to fulfill its obligation under this contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Design-Builder. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Design-Builder shall, at the State's option, become the State's property. The State shall pay the Design-Builder fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Design-Builder's breach. If the damages are more than the compensation payable to the Design-Builder, the Design-Builder will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of *COMAR 21.07.01.11B*.

GI - 1.54 Termination for Convenience

The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Design-Builder has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Design-Builder shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of *COMAR 21.07.01.12A(2)*.



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SECTION 2 – PROPOSAL FORMAT

2.1 Scope of this RFP

- 1) The MDTA, in collaboration with the Federal Highway Administration (FHWA) and the Maryland State Highway Administration (SHA), will develop the National Environmental Policy Act (NEPA) document required for any work that will be completed under this Contract. No Final Design, Long Lead Time Procurement or Phase 2 – Project Delivery services may proceed prior to the completion of the required NEPA process. No commitments are being made to any alternative that will be evaluated in the NEPA process and the comparative merits of all alternatives to be presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered. Any consultants who prepare the NEPA document will be selected by and be under the exclusive control of MDTA and/or SHA.

The Design-Builder will not prepare the NEPA document or have any decision-making responsibility with respect to the NEPA process. The Design-Builder, as part of the Phase 1 – Project Development services, may provide information about the Project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the record. All environmental and mitigation measures identified in the NEPA document must be implemented during the Phase 2 – Project Delivery services. If the NEPA document results in the selection of a no-build alternative, Phase 2 – Project Delivery services will not be advanced, and the Contract terminated.

- 2) Phase 1 – Project Development services

All services completed under Phase 1 of this Contract will assist MDTA to define the general project location and design concepts and establish the parameters for the Phase 2 services. The Design-Builder shall refer to *Title 23, CFR Section 636.103* and FHWA Order 6640.1A (<https://www.fhwa.dot.gov/legsregs/directives/orders/66401a.cfm>) for additional information on the allowable services under Preliminary Design and *Title 23, CFR Section 635.502* for additional information on Preconstruction Services. Work related to utilities and railroad may also be included in Phase 2 packages. If it is determined the right-of-way is required to construct the Project, MDTA will acquire in compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part 710.

The services to be performed include but are not limited to project planning, environmental services, community engagement and marketing agency services support, preparing documentation meeting the requirements of state and federal laws that may be considered in the National Environmental Policy Act document (and re-evaluations), structural analysis, design and rehabilitation of long span, complex and routine bridge structures (including structures over navigable waters), small structures, sign structures, ancillary structures, ITS/electrical systems, noise walls, retaining walls, and buildings; highway design, including major highway and interchange widening and reconstruction (including elevated structures); preparation and processing of agreements for railroads and utilities; development of maintenance of traffic for projects and traffic engineering; environmental design, management, permitting, and impact plate development; ordnance detection; surveys; right-of-way support and plat preparation; performing traffic studies and revenue studies; traffic forecasts; toll plaza and truck inspection station design and reconstruction; laboratory testing and material controls; design of signing and lighting and signalization; utility design and coordination; pavement design; landscape design; noise analysis and mitigation, survey services; geotechnical



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engineering, testing and drilling services; various mechanical and electrical engineering services related to bridge, highway and facility (building) projects; condition inspection; cost estimating; develop operation, warranty and maintenance plans; financial and project analysis and management; public relations support; constructability analysis; project cost modeling; real time construction pricing; preparation of performance specifications; program management services; and any other project planning, preliminary engineering, final design and construction professional services as identified by MDTA.

- a. The Phase 1 work shall be performed by the Design-Builder in compliance with this RFP through Work Orders. The general scope of the Phase 1 Contract under this RFP will be divided into Phase 1A and Phase 1B as described below:

- i. Phase 1A – Proof of Concept

The Proof of Concept phase requires the Design-Builder to: (a) establish the overall Project scope, Project limits, design criteria, and preliminary schedule; (b) develop the Opinion of Probable Construction Cost for the Project; and (c) develop Work Orders to proceed with Phase 1B.

- ii. Phase 1B – Work Package Development

The Work Package Development phase requires the Design-Builder to advance the Proof of Concept work to a level that will enable both the Design-Builder and MDTA to develop a GMP proposal for the Phase 2 packages.

- b. MDTA and the Design-Builder shall collaboratively identify Work Orders for Phase 1A and Phase 1B. Discussion of the Work Orders for Phase 1A shall begin immediately after notice of selection of the Design-Builder by MDTA. Any Work Order during Phase 1 issued prior to completion of the NEPA process will only be for allowable Preliminary Design and Preconstruction Services. The exact scope of each Work Order, including any deliverables, will be negotiated, and agreed to between MDTA and the Design-Builder. This negotiation will establish the upset limit for the Work Order based on schedule, estimated hours, direct labor rates, and allowed direct costs. No work shall begin on this project until a written Notice to Proceed has been provided from MDTA to the Design-Builder. A limited Notice to Proceed may be issued by MDTA once the need for a Work Order has been identified and agreed to by MDTA and the Design-Builder.
- c. The overall intent of the Phase 1 services is for MDTA and the Design-Builder to collaborate and develop all work necessary to support the completion of the required NEPA document, perform community outreach and solicit public input, complete necessary field explorations, surveys, and subsurface investigations, and establish parameters for the Phase 2 packages. While specific deliverables will be defined in the development of each Work Order, Phase 1 deliverables are expected to include preliminary plans, design reports, performance requirements for Final Design, specifications for construction, development of inspection and maintenance procedures of the unique and complex bridge features pursuant to 23 CFR 650.313(g), an automated rating tool for future bridge load ratings, and OPCC and other cost estimates. This will ultimately allow both MDTA and the Design-Builder to prepare and reconcile a GMP on an open book basis for the various Phase 2 packages identified and developed during Phase 1. Phase 2 packages may include Final Design, Construction, or both for the work identified in the Phase 2 package.

If the Design-Builder is awarded the Phase 2 package through a Contract amendment, their role will be to complete the work for the Phase 2 package within the GMP. If the project cannot be delivered within the budget established, MDTA retains the right to cancel the project, reduce the scope, or deliver the project by



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other means. If MDTA chooses to deliver the project by other means, the Principal Participants of the Design-Builder **will not** be permitted to submit a bid or proposal for Phase 2 Services.

Each Phase 2 package must be independent and severable from other Phase 2 packages with a well-defined end point that may be completed and turned over to another designer or contractor should a GMP for the Phase 2 package not be agreed upon. A Contract amendment for a Phase 2 package does not guarantee the Design-Builder that all Phase 2 packages will be awarded to it. Work on a Phase 2 package will not begin until a GMP has been accepted for that specific Phase 2 work package.

- d. The Design-Builder shall host at least one outreach event with the DBE community before the initial submission of each GMP for a Phase 2 package or Long Lead Time Procurement (LLTP) package. The Design-Builder will be required to summarize the event attendees, subcontractor attendees home office location, subcontractor DBE status, and whether or not the event was successful and provide documentation as part of the GMP submission. DBE workshops are one of the factors used to evaluate evidence of good faith efforts to meet the DBE goal and to establish expected DBE needs and timeframes as identified in the OEPP. The Design-Builder is required to retain such documentation for the duration of the Contract and until such time as the minimum DBE participation goals are achieved in payments to DBE firms. The Design-Builder is also required to notify the MDTA of the date, time and location of their DBE workshops. MDTA's Division of Civil Rights and Fair Practices may attend as an observer but are not obligated to attend. The Design-Builder is responsible for its own solicitation to the DBE community.
- e. The Design-Builder may be asked to evaluate early procurement of long lead materials that may be in short supply or require longer than desired lead times from purchase to delivery as another Phase 2 package. The MDTA may choose to exercise this LLTP, only after completion of the NEPA process, if it saves significant construction time, money, or avoids potential delays.

If the MDTA elects to use a LLTP option, it proceeds as follows:

- i. The Design-Builder shall prepare a LLTP plan and price to supply the item(s), including all other costs associated with the procurement (such as transportation, storage, etc.). This price is only for purchased items and shall not include mobilization for construction or other unrelated costs.
- ii. The Design-Builder shall submit a sealed price to the MDTA in the manner directed by the Contract Manager. The MDTA will secure an independent cost estimate for the item(s). Upon opening the Design-Builder's price, the MDTA will determine the acceptability of the price by comparing it to state averages, similar projects, the Independent Cost Estimate (ICE), Engineer's Estimate (EE). For each item, the MDTA will evaluate if the GMP and the ICE were within acceptable tolerance.

The MDTA personnel reviewing these costs may include: the Contract Manager, members of the Design team, an estimating consultant and other consultants, and staff from appropriate MDTA offices.

If prices are not acceptable, the MDTA may enter into a process of risk identification that identifies price differences between the Design-Builder and the Independent Cost Estimate. Following the resolution of these risk issues, the items may be re-priced. If this is not successful, MDTA has the option to accept the offered price or to procure the items later as part of the GMP process for another Phase 2 package for the Project or by some other method. Any extensions to the Contract Term would not be guaranteed.

The Contract amendment is prepared and executed to cover only the defined services. Site preparation to support the procurement or additional procurement services may be part of this Contract amendment.



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Every Contract amendment, including LLTP, shall be evaluated by MDTA for a Disadvantaged Business Enterprise (DBE) goal prior to submission of the GMP. If the DBE goal is greater than zero, in order to be awarded the Contract amendment, the Design-Builder must submit sufficient commitments to reach the goal or demonstrate good faith efforts to meet the goal.

- f. When the MDTA and the Design-Builder agree that a Phase 2 package has been developed to a sufficient level of detail to allow MDTA and the Design-Builder to accurately price the Phase 2 package, the following procedure will be used:
 - i. The Design-Builder will provide a package of plans, reports, performance requirements for Final Design, and other documents developed by the Design-Builder during Phase 1 showing all work to be accomplished or the package may consist of something less formal such as sketches, drawings, and/or written descriptions developed by the Design-Builder during Phase 1. The Phase 2 package will also reference or show all work accomplished under any other Phase 2 packages.
 - ii. MDTA will evaluate the scope of work for DBE participation opportunities and set a goal in accordance therewith.
 - iii. MDTA anticipates incorporating a bonus, incentive, and/or disincentive structure into the Phase 2 agreement.
 - iv. The Design-Builder will prepare a price to perform the work shown. The price will be based on the estimating model and the most recent OPCC for the agreed scope of work.
 - v. The Design-Builder will submit a sealed price to the MDTA in the manner directed by the Contract Manager. Prior to opening of the sealed price, the MDTA will secure an independent cost estimate for the work. Upon opening the Design-Builder's price, the MDTA will determine the acceptability of the price by comparing it to state averages, similar projects, the Independent Cost Estimator's Cost Estimate, and the Engineer's Estimate. For each item, the team will evaluate if the GMP and the ICE were within acceptable tolerance.
 - vi. If the DBE goal is greater than zero, at the time of price submittal the Design-Builder will be required to submit commitments to DBE participants sufficient to meet the goal and/or demonstrate good faith efforts to meet the goal.

The MDTA personnel reviewing these costs may include: the Contract Manager, an estimating consultant and other consultants, and staff from appropriate MDTA offices.

If the prices are acceptable, the MDTA will prepare a Contract amendment.

If the prices are not acceptable, the MDTA will enter into a process of risk identification that identifies price differences between the Design-Builder and the Independent Cost Estimate. Following the resolution of these risk issues, the project will be re-priced up to two more times. MDTA has the option to accept the revised price or to procure the Phase 2 package by some other method.

3) Phase 2 – Project Delivery services



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- a. Work for a Phase 2 package shall commence upon execution of the Contract amendment and issuance of Notice to Proceed by MDTA. The Design-Builder shall complete the work for the Phase 2 package as defined in the Contract amendment, including obtaining all necessary bonding, insurance, permits, and licensing, and shall continue until the end of the term of the Phase 2 work set forth in the Contract amendment.
- b. The Design-Builder shall be responsible for providing all deliverables required for a Phase 2 package including all necessary work and deliverables for obtaining regulatory approval(s) required for the Phase 2 package. Review times or number of reviews for submissions to MDTA, SHA, FHWA, the United States Army Corp of Engineers, Maryland Department of Environment, the United States Coast Guard, Critical Area Commission, Maryland Department of Natural Resources, National Oceanic and Atmospheric Administration, US Fish and Wildlife Service, Anne Arundel County Soil Conservation District, or other permitting agencies shall not be a basis of claim or time extensions against MDTA. MDTA will endeavor to expedite reviews of submissions made directly to the MDTA, but the quality of submissions will ultimately lead to success of the submission review process.
- c. The MDTA intends to utilize a design audit process for all Design-Builder design packages. Under this approach, the Design-Builder must utilize the services of an Independent Design Quality Manager (IDQM) Firm to review all design elements to verify they comply with the amended Contract requirements and the Design-Builder's quality assurance program. The IDQM Firm will be responsible to sign and certify that all design submittals conform to the Contract requirements prior to submission to MDTA for acceptance. For second or subsequent package reviews, the IDQM Firm will verify that all the comments have been fully addressed. This is in addition to the Designer's own internal quality assurance procedures. The IDQM Firm must hold the same Professional Licensure, applicable certifications, trainings, etc. as that required of the Designer for this project.

MDTA's design-related oversight role will include reviews of design packages (drawings, calculations, specifications, special provisions, studies, reports, and other design outputs) for acceptance and audits of the design aspects of the quality assurance program.

- d. MDTA will have the right to review and accept all Final Design deliverables after regulatory approvals and prior to beginning Construction. Acceptance of Final Design deliverables by MDTA shall not relieve the Design-Builder of their responsibility to complete and coordinate all design and construction work to ensure compliance with the Contract requirements. Unless otherwise agreed in the Contract amendment, all Final Design deliverables will require 7 calendar days advance notice and MDTA will return comments within 14 calendar days, beginning the day after receipt of the Final Design deliverable.
- e. Failure of the Design-Builder to provide advance notice of a planned submittal of Final Design deliverables shall make that submittal subject to a 30-day review period. Additionally, any submittal sent within 7 calendar-days before or after the Memorial Day, July 4th, Labor Day, Thanksgiving or Christmas holiday shall require 7 calendar-days additional review period for MDTA. The Design-Builder shall be solely responsible, at no additional cost to MDTA, for the schedule impacts and costs of revisions or re-work arising from MDTA's review of the drawings, specifications, other design submittals for consistency with the requirements of the Contract and caused by the Design-Builder's noncompliance with Contract requirements.
- f. The Design-Builder shall perform quality assurance activities required under the Contract amendment and its quality assurance plan for the construction of the Phase 2 packages, including testing and inspection activities to ensure that materials and the constructed work meet the requirements of the Contract amendment.



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Unless otherwise agreed in a Contract amendment for a Phase 2 package, MDTA intends to follow its typical quality assurance process, including policies and procedures for construction inspection and administration, as defined in the Standard Specifications. The Design-Build Contract will not alter the authorities of the MDTA's Facility Administrator, Directors, Project Engineer, or construction inspection personnel in their administration of the Contract.

2.2 Offeror Submission Requirements

1) Responsibilities of the Offerors:

Before submitting a proposal, the Offeror is responsible for examining the RFP and materials furnished via eMMA. The Design-Builder is responsible for all work necessary to submit proposals and accept responsibility that their Technical and Price Proposal is sufficient to complete all Phase 1 services.

2) Duty to Notify if Errors Discovered:

Offerors shall not take advantage of any error, omission, or discrepancy in the RFP or related materials, including all Project information. If an Offeror discovers such an error, omission or discrepancy, he shall immediately notify the MDTA in writing; failure to immediately notify MDTA of such error, omission or discrepancy shall constitute a waiver of any claim based upon such error, omission, or discrepancy. After such notification, the MDTA will confirm or modify the RFP in writing as the MDTA determines may be necessary to fulfill the intent of the RFP.

3) Offeror Delivery Formalities:

a) Organization of Proposal Submittals:

Offerors shall organize submittal of their Technical Proposal and Price Proposal to match the organization specified in this RFP.

i) Separate Proposal Packages:

Proposal submissions shall consist of two separate sealed packages, a Technical Proposal as described in Section 2.3 Technical Proposals and a Price Proposal as described in Section 2.4 Price Proposals.

ii) Technical Proposal:

The Technical Proposal may be submitted in container(s) of the Offeror's choice provided that the material is neat, orderly, and incapable of inadvertent disassembly. Technical Proposal shall be submitted and bound using a three (3) ring binder with all pages numbered consecutively. Each container shall be clearly marked as follows:

Offeror's Name



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Container ____ of ____

iii) Price Proposal

The Price proposal shall be submitted on the Price Proposal Form supplied by the MDTA and shall be delivered in a sealed envelope capable of holding 8½" x 11" documents without folding and clearly marked as follows:

Offeror's Name

Price Proposal

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Container ____ of ____

iv) Location and deadline for submittal of Technical and Price Proposals

Technical Proposals and Price Proposals delivery date, time, and location is provided on the RFP Key Information Summary Sheet. Refer to RFP Section GI-1.13 Proposals Due (Closing) Date and Time.

v) Number of Copies

One (1) original and ten (10) copies of the complete Technical Proposal shall be submitted along with one (1) electronic PDF file on a flash drive. The electronic copy must be searchable and shall not be a scanned copy. A single original of the Price Proposal shall also be submitted concurrently with and separately from the Technical Proposal.

b) Effect of Submitting Proposal

Signing of the Proposal Submission Form and Price Proposal Form, and delivery of the Proposal represents (a) an offer by the Offeror to perform the Work for the Price submitted within the time(s) specified in accordance with all provisions of this RFP and (b) the Offeror's agreement to all the provisions of the RFP and contract governing requirements and procedures applicable through execution of the contract.

By so signing the above referenced terms and by delivering the Proposals, the Offeror makes the following affirmative representations:

- i) The Offeror has reviewed all documents and undertaken all investigations that could significantly impact the cost, timeliness, quality, or performance of the Phase 1 work. Specifically, the Offeror has (a) carefully examined the RFP and all documents included or referenced therein and (b) become familiar with all applicable federal, state and local laws and regulations, and (c) correlated the information obtained from the above reviews.
- ii) The Offeror has given the MDTA written notice of all errors, omissions, or discrepancies in the RFP in accordance with this RFP.
- iii) The Offeror has determined that the RFP is generally sufficient to convey an understanding of all terms and conditions that could significantly impact the cost, timeliness, quality, or performance of the Phase 1 services.



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c) Withdrawals and Resubmittals of Proposals

An offeror may withdraw Proposals after delivery, provided the request for such withdrawal is made in writing before the date and time set for submission of Proposals. The offeror may revise and resubmit a Proposal so withdrawn before said date and time.

d) No Public Opening

There will be no public opening of Proposals. After the Proposal due Date, all Proposals will be opened in the presence of two or more MDTA employees and reviewed for completeness. A register of Proposals will be prepared that identifies each Offeror. Neither the identity of any Offeror nor the register of Proposals will be publicly disclosed until after the Procurement Officer makes a determination recommending award of the contract.

2.3 Technical Proposals

General: The Technical Proposal submittal shall contain concise narrative descriptions and graphic illustrations, drawings, and charts that will enable the MDTA to clearly understand and evaluate the capabilities of the Design-Builder and the characteristics and benefits of the proposed approach. Emphasize how your approach will further the Project's Phase 1 and Phase 2 goals.

Key Staff Personnel Identified in Proposal: The Design-Builder shall utilize the Key Staff identified in their Technical Proposal to manage the project throughout Phase 1 and Phase 2 of the Contract. In accordance with GI-1.25, changes in Key Staff identified in the Technical Proposal must be approved in writing by the MDTA, and replacement personnel must have equal or better qualifications than the Key Staff originally identified in the Technical Proposal. The format for replacement staff resumes must be in the same format as required for the Technical Proposal including requirements thereof. The MDTA shall be the sole judge as to whether replacement Key Staff members are acceptable. The MDTA reserves the right to direct the replacement of an individual or subcontractor at any time, during both during Phase 1 and Phase 2 of the Contract.

No Price Information: No price information or reference to price of any kind shall be included in the Technical Proposal submittal.

Proposal Organization: Organization of the Technical Proposal shall comprise the parts shown below, meet the specified page limitation, and correspond to the outline as follows:

- 1) Cover Letter
- 2) Capability of the Offeror
- 3) Project Approach
- 4) Cost Estimating Approach
- 5) Legal and Financial Information
- 6) Appendix

Qualitative terms (Critical, Significant, Important) when included at the start of the sections outlined below are given to show the relative importance of the information requested. Refer to RFP Section Evaluation Criteria and Selection Procedures.

Format:



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- Paper. The Technical Proposal submittal shall be submitted on 8.5"-by-11" paper printed back-to-back where practical. Charts, exhibits, and other illustrative and graphical information may be on 11"-by-17" paper but must be folded to 8.5"-by-11", with the title block showing. All sheets, regardless of paper size, will be considered one page. Sheets printed back-to-back will be considered two pages.
- Type Font and Margins. The type face of all narrative text shall be at least 12-pt, either Arial or Times New Roman font, and all page margins must be at least 1/2" from sides and 1" from top and bottom. All pages shall be sequentially numbered not including the cover letter.
- Page Limits. The Technical Proposal submittal shall be limited to the number of pages defined below. No page limit will be imposed on the appendices, although the size of the appendix should be kept within reason.
- Finding tools, such as tables of contents and page dividers shall be utilized to make the submittals easily usable.

Technical Proposal: The Technical Proposal shall be responsive to all requirements of this RFP. Failure to include a response to each of the requirements of the RFP in the Technical Proposal may result in the rejection of the Proposal by MDTA. The Technical Proposal shall be divided into Sections, and the evaluation of each individual Section will be based only on the information provided within that Section. The contents of the Technical Proposal package shall be divided into the following Sections (with page limits indicated as applicable):

1) **Cover Letter (Limit 2 Pages)**

A cover letter, signed by an authorized representative who is the entity that will be signatory to the contract, and must:

- a) Be addressed to the Procurement Officer.
- b) Provide the names and the roles of all participants.
- c) Identify a single, primary point of contact for the Design-Builder with address, phone number, fax number, cell phone number, and E-mail address where all communications from the MDTA should be directed for the proposal and evaluation phases and duration of the contract. A secondary contact for the Design-Builder shall be included (with the above information) for use when primary contact is not available. Either the primary and/or secondary contact must be available 24 hours a day for the duration of the Phase 1 and Phase 2 services and during normal business hours during the proposal and evaluation phases. **The MDTA prefers that the primary and secondary points of contact are Key Staff members that will be directly involved during the proposal development, evaluation phase, and Phase 1 and Phase 2 services.** In the event that the primary and secondary contacts are not assuming their responsibility until after the proposal and evaluation phases, the Design-Builder must identify the primary point of contact for the proposal and evaluation phases. At least one of the Key Staff members must be involved in all phases.
- d) Include an affirmative declaration that to the best of each Participant's knowledge and belief, the information supplied by said Participant is true and accurate.
- e) Include a declaration that each Participant company(s) are prepared to provide the necessary financial, material, equipment, labor and staff resources to perform the project.



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- f) Include a certification that the Design-Builder is in compliance with the State Ethics Laws prohibiting work on a matter in which a former State employee participated significantly as a State Employee for the duration of this contract.
- g) Include a general authorization for the MDTA to verify all information contained in the Technical Proposal.
- h) Include a declaration that no portions of the Capability of the Offeror, Project Approach, and Cost Estimating Approach sections of the Technical Proposal include confidential, proprietary information or trade secrets that should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. Or include a declaration identifying which portions (line by line) are considered confidential, proprietary information or trade secrets and provide justification why such materials, upon request, should not be disclosed after award of the contract.
- i) Include a declaration that all addenda have been received by the Offeror. The Offeror is alerted to their responsibility to confirm that all team members have received all addenda. The Offeror is solely responsible to ensure that their team has the complete and correct information.
- j) Include a declaration that the Offeror takes no exceptions to this RFP, including all attachments, or provide a declaration with any exceptions taken by the Offeror. A Proposal that takes exceptions to the terms may be rejected.
- k) Include a declaration that the Offeror comprehends and takes responsibility as to the nature of the tasks in the Scope of Work.

2) Capability of the Offeror (CRITICAL – Limit 32 Pages)

The overall qualifications of the Project Team including management background, experience and technical competence should be presented in this section. The following specific information is required.

- a) Key Staff (CRITICAL) – Submit US Government Standard Form (SF) 330 I.E. resumes of each of the fourteen (14) Key Staff as detailed in the Offeror Minimum Qualifications section, highlighting their relevant performance on similar type projects. Provide detailed information including project descriptions and job responsibilities. Discuss any licenses or certifications that are relevant to the Key Staff successfully completing their role on this project. The resumes of the Key Staff must identify the function the staff member will fulfill on this project and include their role or function on relevant projects if they are different from that proposed. Resumes shall be a maximum of **two (2) pages** each for the DBPM, DM, CM, ECM, and LSCBE and a maximum of **one (1) page** for all other Key Staff.
- b) Team Past Performance (CRITICAL) – Provide descriptions of six (6) relevant projects with major highway or bridge construction elements. Three (3) from the firm(s) representing the constructor portion of the Design-Builder and three (3) from the designer portion of the Design-Builder. Projects should be of similar scope and complexity as this Project and demonstrate the team's ability to be successful in delivering this Project. Design projects must have achieved completion of all Final Design for the project. Construction projects must be open for the beneficial use of traffic. Emphasize work that has been completed within the last 10 years. Project descriptions shall be a maximum of **two (2) pages** each. Provide, at a minimum, the following:
 - i) Project name and location.
 - ii) Owner/client including specific point of contact with telephone numbers and email address.



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- iii) Brief project description.
- iv) Project delivery method (Design-Bid-Build, Design-Build, Progressive Design-Build, Construction Management at Risk, Construction Manager/General Contractor, or other).
- v) Overall design and construction cost of project, as applicable, including initial contract value, final contract value, and specific reasons for difference.
- vi) Overall design and construction schedule performance, as applicable, including initial completion date, final completion date, and specific reasons for the difference.
- vii) Discussion of what work, including any successful methods, approaches, and innovations, on the project is relevant to this Project and why and how the Design-Builder will use the knowledge to make this Project successful.
- viii) List the specific firm from the Design-Build team who had involvement with the project example.

While not required, Design-Build, Progressive Design-Build, Construction Management at Risk, and Construction Manager/General Contractor projects should be emphasized.

- c) Organizational Chart (IMPORTANT) – Provide an organizational chart showing the lines of communication and identifying participants who are responsible for major functions to be performed, and their reporting relationships in Phase 1 and Phase 2. The organizational chart shall reflect all Key Staff as identified in the RFP and reflect the number of hours per week the Key Staff will dedicate to this Project. Demonstrate redundant staffing resource availability and support staff to the Project. The chart shall not exceed **one (1) page** and may be submitted on an 11” x 17” page.

3) Project Approach (SIGNIFICANT – Limit 14 pages)

- a) Collaboration (CRITICAL) – The Progressive Design-Build process is based on principles of collaboration, cooperation, and trust between MDTA and the Design-Builder. Describe the Offeror’s approach to accomplishing this objective. Discuss how you would support the MDTA in involvement with stakeholders during the Phase 1 services and during the Phase 2 services. Discuss how you would collaborate with the MDTA to reach agreement on critical schedule, design, cost and other matters.
- b) Project Management (CRITICAL) – Discuss the Offeror’s approach to Progressive Design-Build for Phase 1 services and for Phase 2 services. Discussion should include, but not be limited to, proactive coordination and decision making; and quality, risk, schedule, and change management. Discuss your approach to design, material, and construction quality.
- c) Regulatory Approvals and Environmental Permits (SIGNIFICANT) – Discuss your approach to securing the necessary approvals and permits in a timely manner that balances the environmental impacts with other project goals.
- d) Project Risks and Opportunities (SIGNIFICANT) – Identify and discuss Project risks and opportunities that the Offeror considers most relevant and necessary to achieving the Project Goals. Provide a narrative for each risk and opportunity that describes why it is critical, its impact on the Project and discusses the Offeror’s strategies. Describe the role that the Offeror expects the MDTA or other agencies may have in addressing each of these Project risks and taking advantage of the opportunities.
- e) Project Resource Management (IMPORTANT) – Offeror shall describe its proposed approach for achieving the project’s resource and labor staffing needs to deliver a highly expedited schedule for reopening the bridge and roadway to traffic, in the following ways: (a) Please demonstrate how outreach and recruitment for employment and apprenticeships will promote the hiring of local labor, minimize travel subsidence costs, and



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provide opportunities for new additions to the construction industry; and, (b) Please outline what mechanisms, controls, and procedures will be accessible to the Design-Builder for the purposes of labor-management cooperation that promotes the efficient and timely completion of the Project.

4) Approach to Cost Estimating (IMPORTANT – Limit 10 pages)

- a) Estimating Environment (CRITICAL) – Discuss the Offeror’s approach to providing an open and transparent estimating environment that will assure MDTA is receiving a fair price for the work. Offeror should emphasize past work with Independent Cost Estimators to reach a fair price.
- b) Contracting Plan (SIGNIFICANT) – Discuss the approach to developing a subcontractor selection plan that will maximize the competitive solicitation of bids from quality subcontractors prior to agreement of a GMP. Address how the Offeror will demonstrate the subcontractor’s prices are competitive and specify the commitments the Offeror will provide to enhance DBE participation. Discuss how the Offeror will comply with Build America, Buy America (BABA) requirements of the Bipartisan Infrastructure Law.
- c) Sample Estimate (IMPORTANT) – Provide a sample estimate for Substructure Concrete and for River Pile Foundations showing how the Design-Builder will break down direct costs such as labor, equipment, material, trucking, small tools and supplies, etc., as well as the approach to applying indirect costs and markup associated with the items and any other detailed costs used to develop a fully loaded cost for the items for OPCC reviews and bid analysis. The costs and markups provided should be conceptual and will not be evaluated or considered “contractual”. The purpose of this sample estimate is to demonstrate the Design-Builder’s approach to estimating/bidding is open and transparent and will be evaluated for structure of the breakdown rather than costs. Please note that NO Price Proposal mark-ups are to be shared in the Technical Proposal. Doing so shall lead to rejection of the Offerors Proposal.

5) Legal and Financial Information (IMPORTANT) - (No page limit)

- a) Attachment Q to the Appendix of this RFP Document – Contractor Qualification Statement.
- b) Design-Build Team Organization: Briefly describe the proposed legal structure of the Design-Builder.
- c) Liability: State whether the firms who will be party to the prime contract with the MDTA will have joint and several liability and how it is be apportioned. Demonstrate ability to provide required insurance and indemnification to the State.
- d) Bonding Capability: Provide evidence that the Design-Builder is capable of obtaining a Performance Bond and a Payment Bond in accordance with the requirements of the Maryland’s Standard Specifications for Construction and Materials used for this RFP in the amount of at least \$500 Million. Such evidence shall take the form of a letter from a surety company indicating that such capacity is anticipated to be available for the contracting entity. Letters indicating “unlimited” bonding capacity are not acceptable. The surety company providing such letter must be rated at least A- by two nationally recognized credit rating agencies or at least AVII by A.M. Best & Company. The letter should recognize the firm’s backlog and work in progress in relation to its bonding capacity. Note: the letter is excluded from the page limitation.

Note: The total project cost may exceed this \$500 Million value. Bonding approaches and limitations will



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be a component of negotiation prior to issuance of early work, LLTP, and/or GMP packages. A Proposal Guaranty will not be required in response to this RFP.

- e) Legal Liabilities/Proceedings: Provide a description of all instances during the preceding five (5) years involving design and/or construction projects, including proceedings that remain pending as well as those that have concluded, and any court case name and citation of any reported case decision, in which the Offeror or any Offeror team member, affiliate, or subsidiary:
- (i) was determined, pursuant to a final determination in a court of law, arbitration proceeding, or other dispute resolution proceeding, to be liable for a breach of contract or damages, liquidated damages, fees, charges, rents, penalties, or other sums, for delay, noncompliance, breach, or design or construction defect, where the amount determined was greater than \$500,000;
 - (ii) paid, or agreed or consented to pay (including by way of settlement, even if without admission of liability), liquidated damages, fees, charges, rents, penalties or any other sums, claimed or assessed for delay, noncompliance, breach, or design or construction defect, where the cumulative amount paid, or agreed or consented to be paid, was greater than \$500,000;
 - (iii) had imposed or charged against it, paid, agreed, or consented to pay, any form of damages greater than \$100,000, whether liquidated damages or otherwise, due to lane closures outside of permitted times or for failure to provide Key Personnel; or
 - (iv) had its contract terminated for cause.
 - (v) To the extent not disclosed above, provide a list and a brief description (including the resolution, if any) of each arbitration, litigation, dispute review board, mediation, and other dispute resolution proceeding commenced or in process at any time during the last five years involving the Offeror or any Offeror team member, affiliate, or subsidiary, involving design and/or construction projects, where the amount in dispute exceeded \$500,000. Include proceedings that remain pending as well as those that have concluded. If there is any court case name and file or any reported case decision, provide the citation to the case name and file or case decision.
- f) Disciplinary Actions: Provide a list and description of all disciplinary actions taken by any governmental regulatory body or professional standards organization against the Offeror or any Offeror team member, affiliate, or subsidiary, or any proposed Key Personnel during the last five (5) years. Identify the project or projects related to the disciplinary action and a representative with a current phone number and e-mail address for the governmental regulatory body or professional standards organization with knowledge of the disciplinary action.

If there are no such disciplinary actions, affirmatively state that there are none. Conditional or qualified submissions are unacceptable.

6) Appendix (No page limitation)

- a) Copies of all addenda letters and responses to RFIs issued by the MDTA shall be included in the Appendix. The Offeror may also include supporting information related to its Technical Proposal in the Appendix. This supporting information, however, **will not** factor into the evaluation ratings and is considered additional reference information by the MDTA, which may or may not be read at MDTA's sole discretion.



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2.4 Price Proposals

The sealed Price Proposal has two items.

1) Phase 1 Mark-up

The Offeror shall state their Phase 1 Mark-up, identified as a percentage and carried out to two decimal places (e.g. 7.89%), which will be applied to all compensation for the Phase 1 Work. Refer to the Price Proposal Instructions and Form.

The Phase 1 Mark-up includes profit, general and administrative costs, regional and home office overhead, other indirect costs, and any other costs not specifically included in actual paid direct labor rates based on certified payrolls for the personnel performing the Phase 1 services, the Phase 1 Multiplier Rate (2.5), and actual allowed direct expenses with documented costs.

The Phase 1 Mark-up will not change regardless of any Work Order.

A separate breakdown of the Phase 1 Mark-up shall be provided by the Offeror showing the breakdown of all components used in establishing the percentage.

2) Phase 2 Mark-up

The Offeror shall state their Phase 2 Mark-up, identified as a percentage and carried out to two decimal places (e.g. 6.51%), which will be applied to all Phase 2 packages. The Phase 2 Mark-up shall include all general and administrative costs, regional and home office overhead, and other indirect costs for the Principal Participants and all profit for the Design-Builder. Refer to the Price Proposal Instructions and Form.

The following provides a breakdown of what is to be included and what is not to be included in the Phase 2 Mark-up:



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Included in Phase 2 Mark-up	Not Included in Phase 2 Mark-up
Project Principal(s)	Design-Build Project Manager and Construction Manager
Principal Participant Home Office Support Staff	All on-site Construction Management and Supervisory Staff (including field and office staff)
Principal Participant Safety Staff	On-site Administrative Staff
Principal Participant Quality Assurance Support Staff	Direct Costs related to Safety and Quality Assurance
Cost Estimator and Scheduler during Construction	Other project direct costs such as: materials, equipment, and direct labor costs
Design-Builder Profit	Direct labor costs, overtime payments, indirect costs (overhead), travel subsistence, non-salary direct costs and facilities capital cost of money for Final Design Services

The Phase 2 Mark-up shall not change regardless of the final amount of any GMP.

A separate breakdown of the Phase 2 Mark-up shall be provided by the Offeror showing the breakdown of all components used in establishing the percentage. The intent of the Phase 2 Mark-up is to define the cost and level of effort to deliver the project within the GMP. The Phase 2 Mark-up shall exclude all Offeror costs and risk related to the performance of the Phase 2 package. Risk will be priced into sub-contracted amounts and into self-performed work as part of the GMP.



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SECTION 3 – EVALUATION CRITERIA AND SELECTION PROCEDURES

3.1 Evaluation Committee, Evaluation Criteria, and Selection Procedure

1) Evaluation Committee:

Evaluation of proposals will be performed in accordance with *COMAR 21.05.03.03* by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions if necessary, and provide input to the Procurement Officer. The MDTA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate. The Technical Proposal is weighted greater than the Price Proposal.

2) Technical Proposal Evaluation Criteria

The criteria to be used to evaluate the Technical Proposal are listed below in order of importance:

- a) Capability of the Offeror
- b) Project Approach
- c) Approach to Cost Estimating
- d) Cover Letter signed by the Offeror’s authorized representative
- e) Legal and Financial Information

Refer to Section 2.3 for Technical Proposal requirements.

The following elements of the Technical Proposal will be evaluated and rated on their content, accuracy, and presentation:

Technical Proposal Section	Evaluation Factor	Relative Importance
1.	Cover Letter	Pass/Fail
2.	Capability of Offeror	Critical
2a.	Key Staff	Critical
2b.	Team Past Performance	Critical
2c.	Organizational Chart	Important
3.	Project Approach	Significant
3a.	Collaboration	Critical
3b.	Project Management	Critical
3c.	Regulatory Approvals and Environmental Permits	Significant
3dd.	Project Risk and Opportunities	Significant
3ee.	Project Resource Management	Important
4.	Approach to Cost Estimating	Important
4a.	Estimating Environment	Critical
4b.	Contracting Plan	Significant
4c.	Sample Estimate	Important
5.	Legal and Financial Information	Pass/Fail
6.	Appendix	Not Evaluated



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The relative importance of the technical evaluation factors and subfactors, when noted, will be weighted based on the following criteria:

- Critical – Factors or subfactors weighted as Critical are approximately three times the relative importance of Important.
- Significant – Factors or subfactors weighted as Significant are approximately two times the relative importance of Important.
- Important – Factors or subfactors weighted as Important are considered to be integral to the success of the Project in the view of MDTA.

While some factors and subfactors may have more relative importance than others, all of MDTA's goals are necessary for project success. Offerors are cautioned not to overemphasize an approach of certain goals at the expense of other goals. The pass/fail requirements include provision of all required forms included in the Proposal package, properly completed and signed (if required).

The technical evaluation factors and the overall Technical Proposal will be rated by an adjectival (qualitative/descriptive) method. The following adjectival ratings shall be used in evaluation of each technical evaluation factor and the overall technical rating of the Proposal:

EXCEPTIONAL: The Offeror has demonstrated a complete understanding of the subject matter and the Proposal advances the Project Goals to an exceptional level. The Proposal communicates an outstanding commitment to quality by a highly skilled team in all aspects of the Work. The Proposal outlines a strong approach to mitigating project specific risks and inspires confidence that all contract requirements will be met or exceeded. The Proposal contains significant strengths and minor weaknesses, if any.

GOOD: The Offeror has demonstrated a strong understanding of the subject matter and the Proposal advances the Project Goals to a high level. The Proposal communicates a commitment to quality by an experienced team in all aspects of the Work. The Proposal defines an approach to mitigating project specific risks with little risk that the Offeror would fail to meet the requirements of the contract. The Proposal contains strengths that outweigh weaknesses.

ACCEPTABLE: The Offeror has demonstrated an adequate understanding of the subject matter and the Proposal meets the Project Goals. The Proposal communicates a commitment to quality Work by a qualified team. Project specific risks have been identified and the Offeror has a reasonable probability of successfully completing the Work. The Proposal contains strengths that are offset by weaknesses.

UNACCEPTABLE: The Offeror has not demonstrated an understanding of the subject matter and the Proposal presents an approach which does not address the Project Goals. The Proposal fails to meet stated requirements and/or lacks essential information. The commitment to quality is not adequate, with Work performed by unqualified or unproven teams. Project specific risks are not addressed, and the Proposal generates little confidence that the Project requirements can be met. The Proposal contains deficiencies, significant weaknesses and minor strengths, if any.

In assigning ratings, MDTA may assign plus (+) or minus (-) suffix to further differentiate the strengths or limitations within the technical ratings of EXCEPTIONAL, GOOD, and ACCEPTABLE to more clearly differentiate the Proposals.

The term "weakness," as used herein, means any flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of



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unsuccessful contract performance. The term “deficiency” means a material failure of a proposal to meet an RFP requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Any Proposal that receives a rating of UNACCEPTABLE in one or more technical evaluation factors will receive an overall Technical Proposal rating of UNACCEPTABLE.

MDTA or the successful Offeror may use ideas and approaches included in the Technical Proposal excluding proprietary or protected information.

3) Price Proposal Evaluation Criteria

The Price Proposals will be evaluated on the information in Section 2.4 to determine the evaluated Price Proposal. The evaluated Price Proposal will be determined by the following:

Evaluated Price Proposal = (Phase 1 Mark-up X \$\$67,000,000) + (Phase 2 Mark-up X \$1,000,000,000)

MDTA reserves the right to reject any Price Proposal which is determined to be unreasonable.

4) Communications

- a) Communications, or written exchanges between the Procurement Officer and an Offeror, may be used after receipt of Proposals. Communications will be used to address issues which might prevent a Proposal from being reasonably susceptible for award (being placed in the Competitive Range). Communications may be conducted to enhance MDTA’s understanding of Proposals, allow reasonable interpretation of the Proposal, or facilitate the evaluation process. Communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the Proposal, or otherwise revise the Proposal. Communications may address ambiguities in the Proposal or other concerns and information related to past performance.
- b) The MDTA may waive technical irregularities in the proposal of the Offeror that does not alter the quality or quantity of the information provided.

5) Competitive Range

- a) The term “Competitive Range” means a list of the most highly rated Proposals, based on initial Technical Proposal ratings and evaluations of Price Proposals that are judged by the Procurement Officer to be reasonably susceptible of being selected for award. The Competitive Range is based on the rating of each Technical Proposal and evaluation of each Price Proposal against all evaluation criteria.
- b) Proposals that would not be included in the Competitive Range and would be excluded from further consideration include:
 - i) Any Proposal that, even after review of supplemental information or clarification provided by the Offeror in response to an MDTA request, does not pass the pass/fail evaluation factors;
 - ii) A Proposal that, after the initial evaluation, is rated lower than “ACCEPTABLE” for any Technical Evaluation Factor.



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- iii) Any Proposal that includes a Price Proposal that is considered to be non-responsive.
 - c) The MDTA will determine the Competitive Range after a careful analysis of the Technical and Price Proposals.
- 6) Proposal Revisions
- a) Although the MDTA reserves the right to hold discussions (in compliance with COMAR 21.05.03.03 and 23 CFR 636.Subpart E) and request proposal revisions and Best and Final Offers (BAFO) when in the best interest of the State, the MDTA is under no obligation to do so. The MDTA may make its selection and award based on the initial Proposals as submitted.
 - b) At the conclusion of discussions (if held), the MDTA may request a proposal revision or BAFO from all Offerors in the Competitive Range to provide Offerors an opportunity to revise their Proposals (both the Technical Proposal and Price Proposal). The request for proposal revision or BAFOs will allow adequate time, as determined by the MDTA, for the Offerors to revise their Proposals. Upon receipt of the proposal revisions or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate.
- 7) Determination of Successful Offeror
- a) In accordance with COMAR 21.05.03.03(F), award of the contract is to the responsible Offeror whose proposal is determined to be the most advantageous to the State, considering the evaluation factors set forth in the Request for Proposals and the price. The MDTA has determined that the proposal most advantageous to the State will be the Proposal with the best combination of the Technical and Price evaluations, which the MDTA determines will provide the most successful project. When determining which Contractor's submittal is the most advantageous to the MDTA, the relative importance of the Technical Proposal is greater than the Price Proposal. Award may be made to the Offeror with a higher technical rating even if its price is not the lowest. In the event that two overall technical ratings are the same (e.g. "GOOD" and "GOOD"), price alone will not be used as the determining factor. Once the overall technical evaluations have been completed and the price revealed to the Evaluation Committee, a fully integrated trade off analysis will be performed by the Evaluation Committee. In performing this trade off analysis, the Evaluation Committee will consider the facts and circumstances of the procurement and utilize its technical judgment and discretion in considering strengths, weaknesses, and deficiencies of each proposal to determine a recommendation of most advantageous to the MDTA. This recommendation will then be presented to the Procurement Officer who will utilize their technical judgment and discretion to make a final determination of the most advantageous to MDTA considering all the technical and price evaluation factors set forth in the Request for Proposals.
 - b) In order to be considered for award of the contract, a Proposal must pass all the pass/fail factors and receive at least an "ACCEPTABLE" on all technical evaluation factors.

NOTE: All materials, conferences, proposals and other matters related to this project shall remain confidential until the contract is executed with the successful Contractor.

3.2 Rights and Disclaimers

The MDTA may investigate the qualifications of any Offeror under consideration, may require confirmation or verification of information furnished by an Offeror, and may require additional evidence of qualifications to perform the Work described in this RFP. The MDTA reserves the right, in its sole and absolute discretion, to:



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- 1) Reject any or all Sealed Proposals;
- 2) Issue a new RFP;
- 3) Cancel, modify, or withdraw the RFP;
- 4) Issue addenda, supplements, and modifications to this RFP;
- 5) Modify the RFP process (with appropriate notice to Offerors);
- 6) Appoint an Evaluation Committee and Evaluation Teams to review Sealed Proposals,
- 7) Approve or disapprove substitutions and/or changes in Sealed Proposals;
- 8) Revise and modify, at any time before the RFP due date, the factors it will consider in evaluating Sealed Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the MDTA will provide an addendum setting forth the changes to the evaluation criteria or methodology. The MDTA may extend the Sealed Proposals due date if such changes are deemed by the MDTA, in its sole discretion, to be material and substantive;
- 9) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Sealed Proposals;
- 10) Waive minor deficiencies in Sealed Proposals;
- 11) Disqualify any team that changes its Sealed Proposals (following submittal) without MDTA written approval;
- 12) Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
- 13) Refuse to receive or open a Sealed Proposal, once submitted, or reject a Sealed Proposal if such refusal or rejection is based upon, but not limited to, the following:
 - a) Failure on the part of an Offeror to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the MDTA (or State);
 - b) Default on the part of an Offeror under previous contracts with the
 - c) MDTA (or State);
 - d) Unsatisfactory performance by the Offeror under previous contracts with the MDTA (or State);
 - e) Issuance of a notice of debarment or suspension to the Offeror;
 - f) Submittal by the Offeror of more than one Sealed Proposal in response to this RFP under the Offeror's own name or under a different name;
 - g) Evidence of collusion in the preparation of a proposal or bid for any MDTA Design or Construction contract by (a) the Offeror and (b) other offerors or bidders for that contract; and/or
 - h) Uncompleted work or default on a contract in another jurisdiction for which the Offeror is responsible.

MDTA Disclaimers:

The RFP does not commit the MDTA to enter into a contract, nor does it obligate the MDTA to pay for any costs incurred in preparation and submission of the Sealed Proposals or in anticipation of a contract. By submitting a Sealed Proposal, an Offeror disclaims any right to be paid for such costs. The execution and performance of a contract is contingent upon sufficient appropriations and authorizations being made by the General Assembly of Maryland, or the Congress of the United States if federal funds are involved, for performance of a contract between the successful Offeror and the MDTA.



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In no event shall the MDTA be bound by, or liable for, any obligations with respect to the Work or the project until such time (if at all) as the contract, in form and substance satisfactory to the MDTA, has been executed and authorized by the MDTA and approved by all required authorities and, then, only to the extent set forth in a written Notice to Proceed. In submitting Sealed Proposals in response to this RFP, the Offeror is specifically acknowledging these disclaimers.