

## Appendix 3 - Commodity Supplemental

This supplemental contains additional requirements under Section 2 of the solicitation.

### 1. Mercury and Products That Contain Mercury

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

### 2. Green Purchasing

Contractors must comply with Maryland's Green Purchasing Reporting Requirements. See the Green Purchasing website for more information. [Green Purchasing \(maryland.gov\)](https://www.maryland.gov/greenpurchasing/)

The State of Maryland is committed to purchasing environmentally preferable products and services (EPPs). Maryland's State Finance & Procurement Article §14-410 defines environmentally preferable purchasing as "the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose."

Accordingly, Bidders/Offerors are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

The State of Maryland reserves the right to request from the Contractor quarterly sales data over the life of this contract. This information must include details about the recycled content, third-party sustainability certifications, and other environmental attributes of products and services sold on this price agreement per the contract specifications.

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland State agencies to report to the Department of General Services on their procurement of environmentally preferable products and services. To facilitate consistent reporting on targeted contracts, the Contractor will be provided with a VENDOR GREEN SALES REPORT template by the Maryland DGS.

### 3. Price Escalation

Not Applicable

### 4. Unit Prices

Should the Contractor be required to perform work over and above that required by the Contract documents, or should the Contractor be ordered to omit work required by the Contract documents, an equitable adjustment will be made to the Contract price. In determining the amount of any such extra to the Contractor, which is governed by unit prices, the amount of the extra will be the unit price bid/proposal by the Contractor or a reasonable price, whichever is less. In determining the amount of any such credit due the State, which is governed by unit prices, the amount of the credit will be the unit price bid/proposal by the Contractor or a reasonable price, whichever is greater. Unit prices quoted will be the same for extra work and for credit work and shall be the sum total compensation payable or creditable for such items of work, including all labor, materials, bailing, shoring, removal, overhead,

profit, insurance, etc. The Procurement Officer will issue one or more Contract modifications to authorize any such additions or deletions of work.

## **5. Tax Exemption**

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

## **6. Specifications Supplemental**

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

## **7. Delivery and Acceptance**

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

## **8. EPA Compliance**

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

## **9. Occupational Safety and Health Act (OSHA)**

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

## **10. Returned Goods**

Contractor(s) shall be entitled to recover reasonable compensation for any and all goods shipped in accordance with authorized agency orders, meeting all contract requirements, and returned by the agency for reasons other than the Contractor's failure to meet contract requirements. Compensation shall be limited to costs allowable, reasonable and allocable to the returned goods in accordance with COMAR 21.09. Contractor must provide written proof of claimed costs. A return of goods covered by this section shall be deemed a partial termination for convenience as to the returned goods, and other contract provisions and principles applicable to a partial termination for convenience shall apply.

## 11. Prompt Pay Requirements

This contract and all subcontracts issued under this contract at any time are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§30.2 – 30.4, the terms “undisputed amount,” “prime contractor,” “contractor,” “subcontractor,” and “supplier” have the meanings stated in COMAR 21.10.08.01.

A contractor shall promptly pay its subcontractors or suppliers an undisputed amount to which a subcontractor or supplier is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.

If a contractor fails to make payment within the period prescribed in §30.2, a subcontractor or supplier may request a remedy in accordance with COMAR 21.10.08.

A contractor shall include in its subcontracts at any tier for work under this contract wording that incorporates the provisions, duties, and obligations of §§ 30.2 – 30.4 State Finance and Procurement Article §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

An act, failure to act, or decision of a Procurement Officer or a representative of the Mayland State Police Aviation Command concerning a withheld payment between the Contractor and a subcontractor or supplier under this, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Mayland State Police Aviation Command and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Mayland State Police Aviation Command.

The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors or suppliers that have contracted pursuant to the MBE program.

To ensure compliance with certified MBE subcontracting participation goals, the Mayland State Police Aviation Command may, consistent with COMAR 21.11.03.13, take the following measures:

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

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the Mayland State Police Aviation Command determines that the Contractor is not in compliance with certified MBE participation goals, then the Mayland State Police Aviation Command will notify the Contractor in writing of its findings and will require the

Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- (c) If the Mayland State Police Aviation Command determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Mayland State Police Aviation Command requires, then the Mayland State Police Aviation Command may:
  - i. Terminate the Contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.