1. NOTICE TO BIDDERS:

A. GENERAL:

The Notice to Bidders, which may be published as an advertisement, contains a description of the proposed work, together with information to the bidder regarding availability of the Invitation for Bids or Request for Proposals (the solicitation), including the project classification, construction bid forms, plans and specifications, the nature of any proposal guarantee, and the reservation of the right of the State to reject any or all bids. Provisions of State statutes and regulations are incorporated into the contract to COMAR (Code of Maryland Regulations) 21.03.0l.05B.

B. PROJECT CLASSIFICATION:

The Department will estimate the cost of the contract and classify it as falling within one of the following cost groups:

Estimate	Class
Upto$100,000	A
$100,000 to $500,000	B
$500,000 to $1,000,000	C
$1,000,000 to $2,500,000	D
$2,500,000 to $5,000,000	E
$5,000,000 to $10,000,000	F
$10,000,000 to $15,000,000	G
Over $15,000,000	H

The letter designation will be published as part of the solicitation.

2. CONSTRUCTION BID FORM:

A. The Construction Bid Form is that form which is included in the contract documents and which sets forth the cost of the Work, the alternates (if any), and the unit prices (if any) solicited by the State.

B. Unit Prices: Should contractor be required to perform work over and above that required by contract documents, or should he be ordered to omit work required by contract documents, an equitable adjustment shall be made to the contract price, subject to Sections 3.06 and 3.07 of the General Conditions. 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 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 by the contractor or a reasonable price, whichever is greater. Unit prices quoted shall 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. Changes shall be processed in accordance with the General Conditions Sections 3.06 and 3.07.

3. SITE INVESTIGATION:

See Section 3.04 of the General Conditions.

4. BID BONDS:

A. When the total bid amount, including all add alternates, but excluding all deduct alternates is in excess of $100,000, each bidder must furnish, prior to bid closing date, a bid bond in an amount not less than five percent (5%) of the total bid amount, including all add alternates, but excluding all deduct alternates.

B. Bid bonds must provide for minimum liability of the principal and surety in the amount provided in COMAR 21.06.07.02 D(2). Bonds shall be issued by a surety company approved by the Maryland Insurance Administration to do business in Maryland. The contractor may not split its bid bond among multiple sureties or multiple bid bonds.

C. Forms of bid security other than bonds are not permitted.

D. Bid bonds will be returned as soon as practicable after the bid opening.

BID OPENING:

A. Bids Processed via eMaryland Marketplace will be governed by the process and procedure defined in the Information To Bidders attached to eMaryland Marketplace solicitations.

B. Non-electronic bids will be opened in public at the time and place stated in the Notice to Bidders or the solicitation.

C. This subsection C applies only when a solicitation permits the submission of bids by means other than electronic submission on eMaryland Marketplace.

From time to time, unforeseen circumstances may cause the State Office Building (580 Taylor Avenue, Annapolis MD) to be closed to the public. If in the event of such closure, if the State Office Building is not open to the public at least one (1) full hour immediately preceding the deadline established in the ITB/RFP for receipt of bids or offers, the deadline for the receipt of bids or offers will be extended automatically, without further action or notice by the Procurement Officer being necessary, to the next regularly scheduled business day at the same time and location.

6. RIGHT TO REJECT BIDS AND WAIVE INFORMALITIES:

The State reserves the right to cancel a solicitation, to reject any and all bids, and to waive any minor irregularity in a bid in accordance with COMAR21.06.02.

7. DISCREPANCIES:

A. Should a bidder find discrepancies in the contract documents or should he be in doubt as to the meaning or intent of any part thereof, he must, prior to the bid opening: (1) request and receive clarification from the Procurement Officer (who will issue a written addendum if necessary), or (2) file a protest. Failure of the bidder to do so will constitute a waiver of any claim by the bidder for expenses or costs of complying after contract award with the Procurement Officer's interpretation of the contract documents.

B. Oral or written explanations from the State before bid opening will not be binding on the State. Only written addenda issued by the Procurement Officer are binding on the State. If a bidder is not satisfied with oral clarification or with written clarification issued other than in written addenda by the Procurement Officer, the bidder must demand and receive a written addendum from the Procurement Officer; and, if one is not issued, the bidder must timely file a protest or be bound to the State's interpretation of contract requirements. Failure of the bidder to act as required by this section will bind the bidder to the Procurement Officer's interpretation of the contract documents. Any addenda resulting from these requests will be mailed to all listed holders of the Bid Documents within a reasonable time prior to the bid opening. The bidder must acknowledge the receipt of all addenda in the space provided on the Construction Bid Form.

8. MODIFICATIONS AND WITHDRAWAL OF BIDS:

A. Withdrawal or modification of bids will be allowed only as provided in COMAR 21.05.02.09 and .10.

B. Mistakes in bids may be corrected only as provided in COMAR 21.05.02.12. Mistakes in bids may be corrected only as provided in COMAR 21.05.02. 12.

9. PREPARATION OF CONSTRUCTION BID FORM:

A. The bidder shall submit his bid upon the blank form(s) furnished by the Department for this particular contract. The bidder shall state prices in dollars and cents, in both words and numerals. If there is any conflict between the written words and the numerals, the written words shall govern unless circumstances apparent on the face of the bid make it clear that the contractor intended the bid to be based in the amount stated by the numerals.

B. The bid form(s) shall be filled out in ink or typed. Any erasures and/or alterations shall be initialed in ink by the signer.

C. The bid form, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, it shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, it shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer, as aforesaid, there must be attached a copy of that portion of the By-Laws or a copy of a Board resolution, duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation.

D. Any contractor calling itself a "joint venture" shall be, as between the contractor and the State, an ordinary partnership, whose partners are liable to the State as provided in Corporations and Associations Article §9-3 07 of the Annotated Code of Maryland.

E. A bidder or contractor which is a partnership or joint venture must furnish the Department with a copy of the partnership or joint venture agreement prior to award.

10. BID/PROPOSAL AFFIDAVIT AND CONTRACT AFFIDAVIT:

Bidders must read, and truthfully execute the Bid/Proposal Affidavit included in the construction bid package and should submit it with the bid. The Contract Affidavit included in the construction bid package must be executed and submitted by the contractor prior to final award of the contract. If these affidavits are not included in the construction bid package, they can be obtained from the Department of Natural Resources.

II. PUBLIC INFORMATION ACT:

Bidders must identify those portions of their bids which they deem to be confidential or proprietary information or trade secrets and must provide, upon demand by the Department, justification for why such materials should not be disclosed by the State upon request under the Maryland Public Information Act, §~ 10-611, et seq., of the State Government Article of the Annotated Code of Maryland.

12.AWARD AND EXECUTION OF CONTRACT:

A. AWARD OF CONTRACT:

(1) Unless otherwise stated in the contract documents, the award of the contract, if it be awarded, will be to the responsible bidder submitting the lowest responsive bid or evaluated bid. The successful bidder will be given a notice of intent to award stating that its bid (including applicable add or deduct alternates) has been accepted and that it has been selected for award of the contract. The basis for award of alternates is set forth in the subsection B below, "Award of Alternates."

(2) Award of this contract by DNR will not be final and complete until after (a) a proposed award is approved by the appropriate public authorities, (b) the contractor submits complete and satisfactory documentation required under the contract, such as insurance certificates, affidavits, MBE compliance documents, bonds, etc., and (c) DNR executes a contract and forwards it to contractor.

(3) The State reserves the right to apply, before or after award of the contract, any reciprocal preference for Resident Bidders as set forth in § 14-401 of the State Finance and Procurement Article of the Annotated Code of Maryland, at no additional cost to the State. As required by § 14-401(c), a non-resident bidder or offeror submitting a bid or proposal shall attach to its bid or proposal a copy of the current statute, resolution, policy, procedure, or executive order of the resident State of the non-resident bidder or offeror that pertains to that state's treatment of non-resident bidders or offerors. The Reciprocal Preference is a percentage of bid price applied to a nonresident business bidder over a resident business bidder. The State of Maryland does not have an in-state preference but imposes a reciprocal preference in-kind, at the option of the State, against bidders from those states that give in-state bidders a preference against Maryland bidders. COMAR 21.05.01.04 explains the treatment of this preference.

B. AWARD OF ALTERNATES:

If alternates are solicited by the Construction Bid Form, one or more alternates may be awarded in the discretion of the Department in the order in which the alternates are listed in the Construction Bid Form; provided that in the event the State lacks funds for award of the base bid and any succeeding alternate, the State in its discretion may forego the award ofthe alternate for which funds are not available but may award one or more succeeding alternates for which funds are available.

C. EXECUTION OF CONTRACT:

(1) After the evaluation of bids and selection of a recommended contractor by the Procurement Officer, the Department may notify the recommended bidder or offeror to submit certain documents such as Payment and Performance Bonds and MBE information. Time is of the essence when documents are requested. Failure to respond with the requested information in a timely manner may result in the Department rescinding the award recommendation. Should this become necessary for any reason, including failure to attain the specified MBE Goal, the Department will not be responsible for bonding costs incurred by the bidder or offer. An award is not

final until all conditions of Section 12A(2) of the Instructions To Bidders are met. The basis of the award shall be in accordance with Section 12A of the Instructions to Bidders.

a.) This provision applies to all procurement contracts procured by the Department of Natural Resources except contracts for the procurement of Architectural and Engineering services.

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

c.) As used in this provision, bidder~ refers to a bidder under competitive sealed bidding and to an offeror under competitive sealed proposals.

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

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

f.) Upon acceptance of a bid, the Procurement Officer may issue a Contractual Agreement, in a form to be determined by the Department, to the bidder accepting the bid and binding the bidder to a contract. The execution and issuance of a Contractual Agreement by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the contract. The contract of the parties will be embodied in the contract documents, which shall consist of the executed Contractual Agreement of the Procurement Officer, including all documents, terms, and conditions incorporated into those documents by the terms of the solicitation, the Contractual Agreement, the bid, or by operation of law, and the executed bid of the bidder.

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

the Contractual Agreement; then
the solicitation; and then the bid.

(2) As a prerequisite to execution of the contract, the bidder shall have furnished the following in the form and content required by these General Conditions: (a) Performance and Payment Bonds (if required); (b) Certificates of Insurance; (c) Contract Affidavit; and (d) all other documents required by the contract documents to be furnished by the contractor as a condition of award.

(3) After receipt of these properly executed documents, the Department will execute the contract within 90 days following receipt and approval by DNR of all documents and receipt of all approvals of the proposed award required by law, and the Department will then forward the contractor a signed copy of the contract. In the event the State fails to execute the contract and forward it to contractor within the 90 day period, the contractor will have, as its only remedy, the option (a) to declare the contract void without any liability or obligation by the State to the contractor, or (b) to accept an extended period for execution by the State at no additional cost to the State.

13. FAILURE TO EXECUTE CONTRACT:

Failure of the contractor to execute and submit acceptable documents required under Section 12C within the time provided shall be just cause for the payment of the penal sum of the bid bond or other security In the event that the damages sustained by the State exceed the amount of the bid security, the State reserves the right to proceed against the contractor for the balance of its damages, which shall include any and all costs of obtaining the work from another source, including additional administrative costs, architects fees, and other costs and expenses. In the alternative, if the contractor executes the contract but fails to furnish other required documents, the State may at its sole option treat the contractor's failure to furnish the required documents as a default of the contract and may terminate the contract for default under the General Conditions and avail itself of any other remedy provided by the contract

14. PERFORMANCE AND PAYMENT BONDS:

A. Performance and Payment Bonds are required when the amount of the initial contract award, including base bid and any alternates awarded, is in excess of $100,000.

B. Performance and payment security shall be in the form of bonds **only**. No other form of performance or payment security will be permitted. (Performance security secures the State against failure of the contractor to honor its warranty obligations and against latent defects discovered in the future. Therefore, performance security will not be returned to the contractor upon apparent completion of the work.)

C. The contractor may not split its performance or payment bonds among multiple sureties.

D. Prior to the award of the contract, the State will provide the contractor with copies of the required Performance and Payment Bond forms. The bonds must be executed and returned to the Department. Premiums for the bonds shall be paid by the contractor. Performance and Payment Bonds must be submitted on the required DNR forms (see COMAR 21.07.02.10). Other forms are not acceptable.

E. The Performance Bond and the Payment Bond shall each be in the full amount of the contract price. Performance and Payment Bonds are subject to the applicable provisions of COMAR 21.06.07.

F. The Department may reject a bid on the ground that the bidder is not responsible if the bidder fails to furnish Performance and Payment Bonds from a surety which the Department determines has in the past responded diligently and in good faith to bond claims of the State or of subcontractors and suppliers.

G. At the direction of the Department, the contractor may be required to increase the amount of the penal sum of Performance or Payment Bonds; for such increases, the contractor will be reimbursed by the State in the amount of the actual increased bond cost incurred by the contractor. Whenever the amount of the contractor's bonds is increased at the State's request, the State must receive proof of the increase in satisfactory form from the surety. The State will not be liable to the contractor for any increase in bonds not requested by the State.

H. Performance Bonds:

(1) Performance Bonds secure, for the benefit of the State, proper performance of all obligations of the contractor to the State under the contract, provided that Performance Bonds do not secure subcontractors or suppliers at any tier against nonpayment or late payment by the contractor or others.

(2) The State may declare the contractor to be in default, so as to obligate the surety to perform as required by the Performance Bond, with or without terminating the contract for default.

(3) If the State declares the contractor to be in default, the surety has no right to require the State to contract with a contractor of the surety's choosing. The surety must either (a) complete the projector cure the default or (b) allow the State to complete the projector cure or remedy the default, with the surety to remain liable to the State for excess completion costs and other damages incurred.

(4) If the State terminates the contract for default, the State has the right, in its absolute discretion, to prohibit the surety from using the terminated contractor to complete the work or any part of it.

15. MINORITY BUSINESS ENTERPRISE REQUIREMENTS:

To satisfy the requirement of COMAR 21.11.03, Minority Business Enterprise Policies, Bidders are responsible for complying with the requirements of Section 9 of the General Conditions.

16. ARREARAGES TO STATE:

By submitting a response to this solicitation, a bidder represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract, if selected for award. Bidders are on notice of §7-222 of the State Finance and Procurement Article of the Annotated Code of Maryland prohibiting the issuance of a warrant for payment to any person indebted to the State for $50 or more.

17. CONTRACTOR'S ADDRESS:

The bid must state a street address (physical location as opposed to a post office box) of the contractor to which the State may send mail and deliver notices to contractor. A post office box without a street address is not acceptable. Contractor must inform the State in writing of any changes in the contractor's mailing address and street address during the term of the contract and all warranty periods under the contract.

18. COMPONENTS OF THE BID:

A. Words not defined in these Instructions to Bidders but defined in the General Conditions shall have the meanings stated in the General Conditions.

B. **Base Bid**: The Base Bid is the price submitted on the Bid Form and must include the total cost to complete all of the work specified in the solicitation documents which may include specifications, plans/drawings, reports, sketches and any other documents or materials provided with the solicitation package. The Base Bid is to **include** extended Unit Price calculations and Allowances but **exclude** Alternates (Add or Deduct).

C. **Unit Price**: A Unit Price is a bid price per unit of measure specified for materials and or labor. The specified estimated quantity, shall **be included in the Base** Bid amount. Actual usage of Unit Price items will be verified by the Owner or Owner's representative. Adjustment to the contract **sum** based on actual verified usage will be made by Change Order as required by Section **2B** of the Instructions to Bidders.

Example:

Unit Price #1 Remove all below grade rock and replace with approved suitable fill
2000 Cu. Yds. Rock X_____= Amount Base Bid
Bid Price

D. **Allowance**: An Allowance is a specified dollar amount to be **included** in the Base Bid. Allowances are established in lieu of specific requirements and defer selection of materials and equipment to a later date when additional design and/or specifications can be developed. Further information regarding Allowances is in Section 8.03 of the General Conditions.

Example:

Allowance #1: Include in the Base Bid price the lump sum of $10,000 for the purchase and installation of all on site signage.

E. **Alternate**: An Alternate is for a specific scope of work or material **not included** in the Base Bid. The bid price for the Alternate is not included in the Base Bid amount. Alternates may be Add or Deduct. The bid price for the Alternate should only represent the amount for the Alternate over and above the Base Bid work. The specified completion schedule includes any Alternate work. Selection and award of Alternates is explained in Section 12B of the Instructions To Bidders.

Example:

Add Alternate #1: Provide concrete paving as specified and shown on drawing 202 in lieu of the specified asphalt paving.

II. GENERAL CONDITIONS

1. NOTE:

   a) The State of Maryland, Department of Natural Resources, General Conditions of the Contract between Owner and Contractor, current issue, are hereby made a part of these documents.

   b) They are available for review at dnr.maryland.gov/documents/engineering-construction/instructions_to_bidders.pdf or at:

      Department of Natural Resources,
      Tawes State Office Building
      580 Taylor Avenue, D-3
      Annapolis, MD 21401.