

REQUEST FOR EXPRESSIONS OF INTEREST

Poolesville Economic Development Project **DESIGN – BUILD PROJECT**

PART I - SUBMISSION REQUIREMENTS

PART II - CONTRACTING FORMS AND SUPPLEMENTS (FOR REFERENCE ONLY)



SUBMISSIONS ARE DUE: *November 30, 2018 by 4PM*

PRE-SUBMISSION MEETING: November 6, 2018 10AM
at Poolesville Golf Course Pavilion

MONTGOMERY COUNTY REVENUE AUTHORITY

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PART II: CONTRACTING FORMS AND SUPPLEMENTS (FOR REFERENCE ONLY)

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**REQUEST FOR EXPRESSIONS OF INTEREST –
SUBMISSION REQUIREMENTS**

PART I

REQUEST FOR EXPRESSIONS OF INTEREST

Poolesville Economic Development Project
DESIGN – BUILD PROJECT



MONTGOMERY COUNTY REVENUE AUTHORITY

SECTION – INSTRUCTIONS TO OFFERORS

ARTICLE 1 Solicitation-Associated and Project-Specific Definitions

The following definitions apply to this REOI.

- 1.1 An “Offeror” is one who submits a Response to this REOI expressing interest, and planned intent, to bid on the design and construction of the referenced Project.
- 1.2 The “Owner” is **Montgomery County Revenue Authority**.
- 1.3 Communications with the Owner concerning the Project should be addressed to the Contract Administrator:

 Michael Boone, CFO
 Montgomery County Revenue Authority
 101 Monroe Street, Suite 410
 Rockville, Maryland 20850
 Fax: 301-309-0652
 Email: mboone@mcra-md.com
- 1.4 “Project” refers to **the Poolesville Economic Development Project**.
- 1.5 A “Response” or “Submission” is a complete and properly signed set of documents expressing interest, and planned intent, in proposing on the design and construction of the Project when it is subsequently issued by the Owner as a Request for Design-Build Proposal (“RDBP”).
- 1.6 “Qualification and Selection Committee” or “QSC” is the group that will assemble to evaluate written submissions and interviews from Offerors to determine a shortlist of qualified Offerors who will subsequently propose on the design and construction of the Project via a RDBP.
- 1.7 “Request For Expressions of Interest” or “REOI” includes the Advertisement, the Request for Expressions of Interest Forms, and other sample solicitation and Contract forms.

ARTICLE 2 Offeror’s Representation

Each Offeror by making its Submission represents that:

- 2.1 It has read and understands the REOI and its Submission is made in accordance therewith;
- 2.2 The Offeror is qualified to perform the proposed Work (defined in Section 2.5 under “Scope of Services/Work Statement”, below) and will comply with the laws, codes and regulations under which the Work is to be performed;
- 2.3 Its Submission is factual and true in all accounts;
- 2.4 The Offeror declares that the only person, firm or corporation, or persons, firms or corporations, that has or have any interest in this REOI or in the Contract or Contracts proposed to be issued, is or are the undersigned; that this Submission is made without any connection or collusion with any person, firm or corporation making a Submission for the same Work;
- 2.5 The Offeror has reviewed the form Construction Contract Between Owner and Contractor (starting on page 45) and is willing to use that Contract as a basis for negotiating a construction contract if the Offeror is ultimately selected after the RDBP process; and

- 2.6 The Offeror has reviewed the Performance and Payment Bonds (pages 37 and 41) and is willing to execute Bonds taking that form.

ARTICLE 3 REOI Documents

3.1 Copies

- 3.1.1 "REOI Documents" means this REOI.
- 3.1.2 Offerors may obtain from the Owner complete sets of the REOI Documents in the number and for the sum, if any, stated in the advertisement.
- 3.1.3 Complete sets of REOI Documents must be used in preparing Submissions; the Owner assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of REOI Documents.
- 3.1.4 The Owner, in making copies of the REOI Documents available on the above terms, does so only for the purpose of obtaining Submissions and does not confer a license or grant rights for any other use.

3.2 Interpretations or Correction of REOI Documents

- 3.2.1 Offerors must promptly notify the Owner, in writing and via email, of any ambiguity, inconsistency or error which they may discover upon examination of the REOI Documents.
- 3.2.2 Offerors requiring clarification or interpretation of the REOI Documents must make a written or electronic request to the Owner at least ten (10) Days prior to the date for receipt of Submissions.
- 3.2.3 Any interpretation, correction, or change of the REOI Documents will be incorporated into the REOI through Addenda. Verbal explanations or instructions given by Montgomery County Revenue Authority personnel or any person to an Offeror in regard to this REOI will not be binding on the Montgomery County Revenue Authority. Any information given to an Offeror in response to a request will be furnished to all Offerors as an Addendum to this REOI, if such information is deemed necessary for the preparation of Submissions, or if the lack of such information would be detrimental to the uninformed Offerors. Only such Addenda, when issued by the CEO, Montgomery County Revenue Authority, will be binding on the Montgomery County Revenue Authority.
- 3.2.4 If a Pre-Submission Conference is held, it is optional, though highly recommended, that prospective Offerors attend this Pre-Submission Conference. For information regarding the date, time, and location of the Conference, please refer to the Notice to Offerors at the beginning of the REOI.

3.3 REOI Addenda

- 3.3.1 REOI Addenda, if necessary, will only be posted on the Montgomery County Revenue Authority's website.
- 3.3.2 In the event that the Owner issues an Addenda to this REOI, all REOI terms and conditions will remain in effect unless they are specifically changed by the Addenda. Offerors must acknowledge receipt of such REOI Addenda, at the place designated, and prior to the hour and date specified in the REOI (as amended) for receipt of offers. Offerors who do not

timely acknowledge receipt of REOI Addenda by one of the following methods will be rejected:

3.3.2.1 By returning one signed copy of the Addenda to the Contract Administrator;

3.3.2.2 By acknowledging receipt of the Addenda on at least one signed copy of the offer that is submitted; or

3.3.2.3 By stating that the Addenda is acknowledged in a signed letter that refers to the REOI and Addenda numbers.

3.3.3 The CEO of the Montgomery County Revenue Authority may grant a waiver of the requirement to acknowledge receipt of the Addenda in the manner provided above if deemed to be in the Montgomery County Revenue Authority's best interest. No waiver may be granted, however, until the Offeror states in writing that the Offeror will be bound by any substantive changes made by the Addenda to the terms of the REOI.

ARTICLE 4 Offering Procedure

4.1 Form and Style of Submissions

4.1.1 Submissions must be submitted on the forms provided in the REOI and in the quantity listed in Article 1 (page 26), Written Submissions.

4.1.2 Each copy of the Submission must include the legal name of the Offeror and a statement as to whether the Offeror is a sole proprietor, a partnership, a corporation, limited liability corporation, limited liability partnership, or any other legal entity. Signatures of Offerors must be in their correct legal form and must not be abbreviated to common usage or trade name form. All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of a Submission is a representation by the person signing that the person signing is authorized to do so on behalf of the Offeror.

4.1.3 Acknowledgement of REOI Addenda must be included with the Submission.

4.1.4 All costs incurred in the preparation and submission of Submissions will be borne by the Offeror and must not be incurred in anticipation of receiving reimbursement from the Montgomery County Revenue Authority.

4.2 Submission of Responses

4.2.1 Sealed Submissions are due on **November 30, 2018 by 4:00 p.m.** in the Montgomery County Revenue Authority, 101 Monroe Street, Suite 410, Rockville MD 20850, for the evaluation of proposed services in accordance with the instructions, terms, conditions and specifications and/or scope of services set forth in this solicitation. Submissions must be submitted in a sealed envelope and clearly marked with the REOI name, due date, and time. Submissions received after the time specified will be returned unopened to the Offeror. The Montgomery County Revenue Authority will not be responsible for Submissions received after the due date due to premature or late deliveries, postal/courier delays, or late opening of a submission if it is improperly addressed or identified.

4.2.2 The Offeror assumes full responsibility for timely delivery at the location designated for receipt of Submissions.

4.2.3 Oral, telephonic, telegraphic and electronic Submissions are invalid and will not receive consideration.

4.3 Proprietary and Confidential Information

4.3.1 This is notification to prospective Offerors that the Montgomery County Revenue Authority has unlimited data rights regarding Submissions submitted in response to its Solicitations. Unlimited data rights mean that Montgomery County Revenue Authority has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by Offerors in response to this or any Solicitation issued by the Montgomery County Revenue Authority. However, information that is deemed to be confidential commercial or financial information as defined by the Maryland Public Information Act (MPIA), §§4-401 of the General Provisions Article of the Annotated Code of Maryland will be exempted from disclosure to the extent permitted by the MPIA. **It is the responsibility of the Offeror to clearly identify each part of its Submission that is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with one-inch bold face letters stating the words "confidential" or "proprietary."** The Offeror agrees that any portion of the Submission that is not stamped as proprietary or confidential will be deemed not to be proprietary or confidential.

4.4 Modifications or Withdrawal of Submission

4.4.1 An Offeror can withdraw its Submission in response to this REOI by a written Notice to the Contract Administrator as designated elsewhere in this Solicitation.

4.4.2 Prior to the time and date designated for receipt of Submissions, Submissions submitted early may be modified or withdrawn only by written notice to the Owner receiving Submissions at the place and prior to the time designated for receipt of Submissions.

4.4.3 Timely modifications or withdrawals must be in writing over the signature of the Offeror. Modifications or withdrawals must be confirmed by written confirmation over the signature of the Offeror and must have been received on or before the date and time set for receipt of Submissions.

4.4.4 Withdrawn Submissions may be resubmitted up to the time designated for the receipt of Submissions provided that they are then fully in conformance with the REOI.

4.4.5 Submissions cannot be modified or supplemented after the time and date designated for receipt of Submissions.

ARTICLE 5 Consideration of Submissions

5.1 Opening of Submissions

5.1.1 Unless stated otherwise in the REOI or in the Addenda to the REOI, the properly identified Submissions received on time will be reviewed and evaluated by the Qualification and Selection Committee (QSC).

5.2 Rejection of Submissions

5.2.1 The Owner has the right to reject any or all Submissions and, in particular, to reject a Submission not accompanied by any required Submission data required by the REOI Documents or a Submission deemed incomplete or irregular in any way by the Owner.

5.3 Notice of the Shortlist of Selected Offerors

- 5.3.1 The Montgomery County Revenue Authority will notify all respondents via email of the selected (shortlisted) Offerors.
- 5.3.2 It is the responsibility of the Offerors to keep informed of the current status of the shortlist for this REOI.
- 5.3.3 Only the Offerors posted on the shortlist will be allowed to propose on the related subsequent RDBP for design and construction of the referenced Project.

5.4 Protests

- 5.4.1 All protests made pursuant to this REOI must be in writing and delivered to the CEO, Montgomery County Revenue Authority, at 101 Monroe Street, Suite 410 Rockville, MD 20850: (a) within ten (10) days after the Montgomery County Revenue Authority, notifies respondents of the shortlist, if the Offeror seeks, as a remedy, inclusion on the shortlist, or (b) before the submission date for Submissions, if the Offeror seeks, as a remedy, the cancellation or amendment of the REOI. Each protest must contain a protest filing fee in the amount of \$500 (US currency). If the fee is paid by check, then the check must be made out to Montgomery County Revenue Authority. The CEO, Montgomery County Revenue Authority, may return the filing fee to the protesting Offeror, if the protest is sustained. The CEO, Montgomery County Revenue Authority, must dismiss any protest not timely received. **The time period for any appeal commences THE DAY FOLLOWING the date of the notification of the shortlist of Offerors.**
- 5.4.2 Only an Offeror who is “aggrieved” may file a protest. Aggrieved means that the Offeror who is filing the protest may be eligible for inclusion on the shortlist if the protest is sustained (e.g., a fifth ranked Offeror is not aggrieved unless the grounds for a protest, if sustained, would disqualify at least two of the shortlisted Offerors or would require that the REOI be reissued).
- 5.4.3 Each protest must contain the following: identification of the REOI; the name, address and telephone number of the protesting Offeror; a statement supporting that the Offeror is aggrieved; and specification of all grounds for the protest, including submission of detailed facts and all relevant documents, citation to relevant language in the REOI, regulations, or law relied upon; and, all other matters which the Offeror contends support the protest. The burden of production of all relevant evidence, data and documents, and the burden of persuasion, to support the protest is on the Offeror making the protest.

ARTICLE 6 Qualification of Contractors

- 6.1 The Owner may make such investigations as it deems necessary to determine the ability of the Offeror to perform the Work, and the Offeror must furnish to the Owner all such information and data for this purpose within five (5) days of Owner’s written request. Failure to submit the information within five (5) calendar days of the Owner’s request may be sufficient cause for the Owner to consider the Offeror’s response unacceptable. The Owner may visit any prospective Contractor’s place of business or consider other factors necessary to perform the Work. The Owner reserves the right to reject the Submission of an Offeror that has previously failed to perform properly or to complete in a timely manner projects for the Owner, or whose proposed subcontractors, suppliers, or surety have similarly failed to perform properly, or timely on projects for the Owner, or if investigations show the Offeror is unable to perform the requirements of the Contract.

- 6.2 Offerors and Subcontractors must be licensed as required by Maryland law, including but not limited to, §17-602 of the Annotated Code of Maryland. For additional information, contact the Maryland Department of Labor, Licensing and Regulation, 500 N. Calvert Street, Baltimore, MD 21202.
- 6.3 Upon the Owner's request, Offerors must furnish a current condensed net worth statement and references for verification of financial responsibility. Failure to submit the information within five (5) calendar days of the Owner's written request may be sufficient cause for the Owner to consider the Offeror's response unacceptable.

ARTICLE 7 Performance Bond and Payment Bond

7.1 Required Bonds

7.1.1 Prior to the award of the Contract following the RDBP process, a successful Offeror must furnish bonds covering the faithful performance of the Contract and the payment of all labor and material arising thereunder in the amount of 95% of the Contract amount, with a corporate Surety or Sureties authorized to do business in the State of Maryland and accepted by the Owner. **The Performance and Payment Bonds must be written in the Performance and Payment Bond forms provided by the Montgomery County Revenue Authority.** The Offeror must pay any premiums.

7.2 Time of Delivery and Form of Bonds

7.2.1 The Offeror must deliver the required Performance Bond and Payment Bond to the Owner prior to execution of the Contract by the Owner.

7.2.3 The Offeror must require the Attorney-In-Fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of its Power of Attorney.

ARTICLE 8 Design-Build Contract Between Owner and Contractor

The Contract for the Work resulting from the ensuing RDBP is expected to be materially the same as the attached Fixed Price Design-Build Contract between Owner and Contractor (see page 45).

End of SECTION – INSTRUCTIONS TO OFFERORS

SECTION – SCOPE OF SERVICES

ARTICLE 1 Background / Intent

- 1.1 The Montgomery County Revenue Authority seeks Offerors who are qualified and prepared in all respects to undertake the complete design and construction of the Project. This REOI is the first step of a two-step process by the Montgomery County Revenue Authority. In order to be invited to proceed to the second step of the process, an Offeror must timely respond to this REOI and be selected to receive a Request for Design-Build Proposal (“RDBP”) described herein.
- 1.2 The Owner intends to select three qualified Offerors using the process defined in this REOI. It is the Owner’s further intent to request and receive proposals for the design and construction of the Project, as preliminarily defined in the following Scope of Services, from only those three Offerors, by a separate RDBP solicitation, and to enter into a Contract with the Offeror providing the lowest responsive bid.
- 1.3 Preliminary Solicitation Schedule: It is the Owner’s intent to issue the shortlist of qualified Offerors within 60 days of the submission deadline of the REOI. The Owner plans to issue the RDBP to the shortlisted Offerors at the time of the posting of the shortlist and to award the Construction Contract within 120 days of the submission deadline of the RDBP. These durations are for information purposes only and the Owner reserves the right to revise any and all of the durations and to terminate and/or to not initiate any and/or all of the solicitation steps.
- 1.4 The Project information provided by the Owner in the following Scope of Services is general and preliminary in nature. While the information is intended to provide an accurate representation of the Project, all Project information in this REOI is preliminary and will be superseded by the RDBP, when issued, and the resultant Contract, when executed.

ARTICLE 2 Scope of Services / Work Statement

- 2.1 **Existing Conditions** – The Project is located at 16601 W Willard Road, Poolesville, MD 20837.
- 2.2 **Project Background** – The Montgomery County Revenue Authority desires to contract with an experienced and qualified Design/Build contractor for the design and construction of a new clubhouse/events facility and wine production facility to be located on approximately 13 acres of land that is part of the Poolesville Golf Course property. The golf course is currently open and will remain open during all phases of construction. The Project will consist of demolition of an existing structure and construction of these 2 new structures as well as new parking area.
- 2.3 **Project Purpose** – The purpose of the Project is to support agriculture, industry, and education through innovative programming and partnerships.
- 2.4 **Project Description** – The Project will include design through 100% construction documents, file all required permits and build a new 16,500 sq. ft. clubhouse/event center and new 7,300 sq. ft. wine production building and provide design and construction services for onsite improvements and utilities service extensions for the project site. The proposed plan layouts are general and conceptual in nature. While the information is intended to provide an accurate representation of the project, all project information in this REOI is conceptual and will be superseded by the separate Requests for Design-Build Proposals, when issued and the resultant contract, when executed.

- 2.5 The “**Work**” is generally defined as follows:
- a. Demolition of existing clubhouse/event center.
 - b. Design and construction of new 16,500 sq. ft. clubhouse/event center that will consist of, but not be limited to, the following: offices, restrooms, commercial banquet kitchen, commercial ala carte kitchen, banquet area, multi-purpose room, pre-event space, storage areas, interior and exterior signage, and ala carte eating area.
 - c. Design, procure and install the FF&E, low voltage systems for fire alarm system; security system, cameras and CCTV; I.T. equipment, racks, A/C UPS and data drops; sound systems; telephone & paging systems; and CATV.
 - d. Design and construct new 7,300 sq. ft. wine production building that will consist of, but not be limited to, the following: restrooms, wine production area, barrel storage, case storage, outdoor receiving and production space. This will include working with consultants, hired by Montgomery County Revenue Authority, who specialize in wine production design and equipment. All equipment will be bid separately and installed by others.
 - e. Construct, coordinate, and renovate as required, the facility’s site amenities which include, but are not limited to, the following: entrance monuments, site paving, striping, milling and grading, hardscapes immediately surrounding the facility such as outdoor patios, seating areas, and walks connected to and surrounding the building, landscaping, tree preservation, parking areas, site utilities and storm water management.
 - f. The Work is conceptually defined in the attached REOI drawings, which are included in Attachment A. These drawings are not bidding documents, are not complete, and are only provided for general project information.
 - g. File for and obtain all required building, site and utilities permits to construct the Project.
- 2.6 Information about estimated costs.
- 2.7 The Montgomery County Revenue Authority intends to issue a Notice-To-Proceed to the awarded Offeror in 2019.
- 2.8 Construction of the above Work must meet the requirements of the Montgomery County Department of Permitting Services. In addition, the Contractor will be required to comply with the Contract requirements of a Critical Path Method (CPM) schedule and monthly updates, total building system commissioning, and a Contractor Quality Control program.

ATTACHMENT A –REOI DOCUMENTS and DRAWINGS

Note: These documents and drawings are being provided for informational purposes only. They are not bidding documents.

**M-NCPPC Mandatory
Referral
(#MR2018027)
Drawing and
Document Index**

01-DESC-MR2018027	Project Narrative
02-LOCAL--MR2018027-SP-04	Local Area Drawing
03-MRPLAN-MR2018027-SP-01	Cover Sheet
03-MRPLAN-MR2018027-SP-02	MR Approval Conditions
03-MRPLAN-MR2018027-SP-03	MR Notes & Computations
03-MRPLAN-MR2018027-SP-04	MR Local Area Map
03-MRPLAN-MR2018027-SP-05	MR Overall Plan
03-MRPLAN-MR2018027-SP-06	MR Plan
03-MRPLAN-MR2018027-SP-07	MR Plan
03-MRPLAN-MR2018027-SP-08	MR Plan
03-MRPLAN-MR2018027-SP-09	MR Plan
03-MRPLAN-MR2018027-SP-10	MR Notes & Details
03-MRPLAN-MR2018027-SP-11	MR Notes & Details
03-MRPLAN-MR2018027-SP-12	MR Notes & Details
03-MRPLAN-MR2018027-SP-13	MR Notes & Details
03-MRPLAN-MR2018027-SP-14	MR Notes & Details
04-UTIL-MR2018027-EXB-05	Color-Coded Utility Plan
05-CIRC-42018027-EXB-03	Loading Circulation Exhibit
05-CIRC-42018027-EXB-04	Pedestrian Circulation Exhibit
06-NRI-42018186E-001	NRI/FSD (Natural Resource Inventory/Forest Stand Delineation)
08-FCPEX-42018161E	Forest Conservation Plan Exemption
09-SWM-MR2018027-SWM-001	SWM Concept Cover Sheet
09-SWM-MR2018027-SWM-002	SWM Concept Plan
09-SWM-MR2018027-SWM-003	SWM Concept Details
09-SWM-MR2018027-SWM-004	Proposed Drainage Area Map
09-SWM-MR2018027-SWM-005	Existing Drainage Area Map
09-SWM-MR2018027-SWM-006	Proposed SWM Storm Drain Profiles
09-SWM-MR2018027-SWM-007	Proposed SWM Storm Drain Profiles
10-LL-MR2018027-L-01	MR Overall Landscape Plan
10-LL-MR2018027-L-02	MR Landscape Plan
10-LL-MR2018027-L-03	MR Landscape Plan
10-LL-MR2018027-L-04	MR Landscape Plan

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10-LL-MR2018027-L-05	MR Landscape Plan
10-LL-MR2018027-L-06	MR Landscape Plan
10-LL-MR2018027-L-07	MR Landscape Plan
10-LL-MR2018027-L-08	MR Hardscape Plan
10-LL-MR2018027-L-09	MR Hardscape Plan
10-LL-MR2018027-L-10	MR Landscape Details & Schedule
10-LL-MR2018027-LT-01	MR Lighting Plan
11-SOC-MR2018027	MCRA Statement of Compliance
12-ARCH-MR2018027	Architectural Concept
15-CNCPT-520180080	Concept Plan #520180080
16-EXISTING AERIAL MAP-MR2018027-EXB-01	Existing Aerial Map
16-EXISTING CONDITIONS PLAN-MR2018027-EXB-02	Existing Conditions Plan
16-FIRE DEPARTMENT ACCESS PLAN-MR2018027-FDA-01	Fire Department Access Plan
16-ILLUSTRATIVE SITE PLAN-MR2018027	Illustrative Site Plan
16-PHASING EXHIBIT-MR2018027-EXB-07	Phasing Exhibit
16-SIGHT DISTANCE-MR2018027-EXB-06	Sight Distance Exhibit

For listed reference drawings and documents, visit <https://mcra-md.com/PVREOI>. Final site design & engineering subject to change with County/State agency review and approval. Drawings are for reference only and are NOT FOR CONSTRUCTION.

End of SECTION – SCOPE OF SERVICES

SECTION – PERFORMANCE PERIOD

ARTICLE 1 Term

1.1 The Contract Term will be identified in the RDBP documents.

End of SECTION – PERFORMANCE PERIOD

SECTION – METHOD OF EVALUATION AND AWARD

ARTICLE 1 Procedures

- 1.1 Upon receipt of Submissions, the Qualification and Selection Committee (QSC) will review and evaluate all Submissions in accordance with the Evaluation Criteria listed in Article 2 of this Section.
- 1.2 Based on its evaluation of the Offerors, the QSC will identify up to three (3) qualified Offerors to be included in the REOI shortlist. The QSC will make its shortlist recommendation of up to three highest ranked Offerors.
- 1.3 Upon approval of the selected Offerors, the Montgomery County Revenue Authority will notify all respondents via email of the selected (shortlisted) Offerors.
- 1.4 Subsequent to the notification of the shortlist, the Montgomery County Revenue Authority intends to, but is not required to, issue an RDBP for the design and construction of the Project. In this event, the RDBP will be issued only to those Offerors on the shortlist resulting from this REOI. No other Offeror may submit a bid for this Project. Award of the resulting Contract will be based solely on the results of the RDBP solicitation process. Submissions and scores from the REOI will not be used after generation of the shortlist.
- 1.5 The Montgomery County Revenue Authority reserves the right to cancel this REOI and reserves the right to cancel, or not issue, the corresponding RDBP for this Project.

ARTICLE 2 Written Submission and Evaluation Criteria

The submission information required will be evaluated in accordance with both Non-Technical Evaluation Factors and Technical Evaluation Factors which are described below. This information is intended to assist Offerors in organizing their teams and in preparing their Submissions by highlighting matters of particular importance to the Montgomery County Revenue Authority.

1.1 Non-Technical Evaluation Factors

Non-Technical Evaluation Factors will be evaluated first and are described as follows:

- 1.1.1 Non-Technical Evaluation Factor #1 - Legal: The Offeror has presented in its Submission evidence that it has the legal ability to enter into a design-build contract with the Montgomery County Revenue Authority and to perform the Contract to design and build the Project and that it complies with the State licensing requirements and has properly identified the Offeror's principal participants in the proposed Project.
- 1.1.2 Non-Technical Evaluation Factor #2 - Financial: The Offeror has demonstrated in its Submission its ability to provide required bonds, acceptable guaranties, required insurance and to meet financial requirements of undertaking and completing the Project.
- 1.1.3 Non-Technical Evaluation Factor #3 - Responsiveness to REOI: The Offerors Submission does not deviate from REOI requirements in any material respect.

The Montgomery County Revenue Authority may accept deficiencies in Submissions relating to the above Non-Technical Evaluation Factors but shall have no obligation to do so.

1.2 Technical Evaluation Factors

The technical evaluation factors are described as follows:

- 1.2.1 Technical Evaluation Factor #1 – Design-Build Team Project Experience: Demonstrated experience relevant to the size, complexity, and nature of the Project and the experience of principal participants, design manager, quality control managers, and other consultants, subcontractors, and specialty subcontractors with an emphasis on design-build, mechanical, electrical and plumbing, building and security systems, and environmental and quality compliance.
- 1.2.2 Technical Evaluation Factor #2 - Team Organization and Key Managers: The proposed organization for the Project, including the percent share of self-performed versus subcontractor performed work, with emphasis on expertise in the areas delineated in section 1.2.1 above. Provide an organizational chart including key management positions:
- Principal-in-Charge
 - Design-Build Project Manager
 - Project Design Manager
 - Structural Engineer
 - Design Architect
 - Civil Engineer – (must have experience in Montgomery County)
 - Geotechnical Engineer
 - Environmental Engineer
 - Mechanical Engineer
 - Electrical Engineer
 - Construction Manager
 - Quality Control Manager - Design
 - Quality Control Manager - Construction
- 1.2.3 Technical Evaluation Factor #3 - Project Understanding and Management Plan: General description of the tasks involved in the Project. Approach to managing design process and ensuring timely/quality performance of design team. Approach to managing construction, quality assurance/control, cost control and involving design team members during construction. Approach to overall management of the Project. Discuss how key success criteria will be met. Describe organization of team and how each element of the team will contribute to the success of the project. Describe communication plan. Identify major project risks and how they will be mitigated.
- 1.2.4 Technical Evaluation Factor #4 - Past Performance: The Offeror shall prepare and send a Design-Build Reference Questionnaire Package to the Owner for each of the projects identified in Tab #1.1 below. It is the Offeror's responsibility to follow up and encourage the references to complete and submit the questionnaire to the Montgomery County Revenue Authority.

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
PASS/FAIL EVALUATION FACTORS (Must Pass all 3 to qualify for further evaluation)		Legal - Provide evidence that the Offeror has the legal ability to enter into a design-build contract with the Montgomery County Revenue Authority and to perform the Contract to design and build the Project and that it complies with the State licensing requirements and has properly identified principal participants. (See Documents 1.2 and 1.3)	Verify submittal of sufficient evidence. Failure of an Offeror to submit sufficient evidence may result in Offeror's submission being rejected as unacceptable.	Pass/Fail
		Financial – Demonstrate in the submission the Offeror’s ability to provide the required bonds, acceptable guaranties, required insurance, and to meet financial requirements of undertaking and completing the Project.	Verify demonstration of financial abilities. Failure of an Offeror to demonstrate the financial abilities will result in Offeror's submission being rejected as unacceptable.	Pass/Fail

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
		Responsiveness to REOI - The Offeror's submission does not deviate from the REOI requirements in any material respect.	<p>Verify conformance to REOI requirements.</p> <p>Failure of an Offeror to provide a conforming submission will result in Offeror's submission being rejected as unacceptable.</p>	Pass/Fail
TECHNICAL EVALUATION FACTOR #1 – Design-Build Team Project Experience	1.1	Design-Build Team Experience/Qualifications - Provide information for a maximum of three (3) projects the construction and design team have performed together within the past five (5) years. Include a detailed description with each project that explains the scope of work performed (see Document 1.4).	The QSC will evaluate the quality of the three (3) projects and their similarity to this project. The QSC, at its sole option, may make site visits to projects for evaluation purposes. If requested, Offeror will provide coordinated access into the three (3) listed projects.	75
	1.2	Lead Design Firm Experience - Past Project Description, provide a listing of at least three (3) but no more than five (5) projects that highlight design experience relevant to this Project, which the lead design firm has performed within the last five (5) years. Design experience as part of a design-build contract is preferred.	Demonstrated history and experience of lead design firm working on projects of similar scope to this Project.	100

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
	1.3	Lead Construction Firm Experience - Past Project Description, provide a listing of at least three (3) but no more than five (5) projects that highlight construction experience relevant to this Project, which the lead construction firm has performed within the last five (5) years. Design-build experience is preferred.	Demonstrated history and experience of lead construction firm working on projects of similar scope to this Project.	75
TECHNICAL EVALUATION FACTOR #2 – Team Organization and Key Managers	2.1	Organization chart - Provide an organizational chart showing the functional structure of the design-build team. Indicate on the chart the personnel names, position titles, and firm affiliations. Chart shall indicate the key staff positions as defined above, including additional positions. Chart shall also reflect bidding/financial, project controls, and field construction functions, including, design discipline leads, construction management and supervision leads and other key organizational functions, especially interfaces with third parties.	Demonstrated staffing plan and business and project organization.	75
	2.2	Organization structure - Explain how this design-build team structure facilitates the involvement of construction expertise during the design activities and involvement of design staff during construction activities. Indicate what activities will be performed by construction staff that relate to the design performance, and what activities will be performed by design staff that relate to the contract process and construction performance.	Demonstrated plan and benefits of proposed staff cross-participation.	75

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
	2.3	Special capabilities and/or resources - Provide a brief description of any special capabilities and/or resources that your design-build team can provide to increase your capacity to perform this Project.	Identify experience and/or expertise related to design construction and functions of the proposed facilities.	50
TECHNICAL EVALUATION FACTOR #3 – Project Understanding and Management Plan	3.1	Project Understanding and Management Plan - The Offeror shall describe the tasks involved in the Project and how these tasks integrate into an overall management approach. Discuss the design management process which will ensure timely and quality performance of the design team, approach to managing construction, quality assurance and quality control, and involvement of design team members during construction. Identify potential risk factors, special issues and potential problems and explain risk management approaches. Also discuss approach to maximize the benefits of the design-build process.	Quality of the Offeror’s description of the tasks involved in the Project and how the tasks integrate into an overall management approach. Clarity of the design management process ensuring timely and quality performance of the design team. Quality of the stated approach to managing construction, quality assurance and quality control, and the involvement of design team members during construction. Identification of potential risk factors, special issues and potential problems and explanation of risk management approaches. Quality of the stated approach to maximize the benefits of the design-build process.	100

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
	3.2	<p>Key Success Criteria - Discuss how the management approach will ensure that the following key success criteria are met.</p> <p>Budget - Project is completed at or under the contracted cost.</p> <p>Conformance to Montgomery County Revenue Authority Expectations - Completed project meets or exceeds the user's envisioned functional goals.</p> <p>Schedule - Project is completed on or before the contracted completion date.</p> <p>Conformance to Specifications - Completed project meets or exceeds all technical performance specifications provided by the owner.</p> <p>Quality of Workmanship - Completed project meets or exceeds the accepted standards of workmanship in all areas.</p> <p>Project Teamwork and Cooperation - Construction process does not unduly burden the Owner's Project management staff.</p>	Clarity of the Offeror's management approach that will ensure the key success criteria are met.	100

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
	3.3	<p>Safety - The Offeror shall provide sufficient information to enable the Montgomery County Revenue Authority to understand and evaluate the capability of the Offeror to provide a safe working environment for all individuals associated or affected by the Project. At a minimum, each Offeror shall respond to the following requirements (in the case of joint ventures the information detailed below should be disclosed for both entities):</p> <ul style="list-style-type: none"> a) Provide the lead contractor's numeric Experience Modification Rating, the rating year, and the name of the Insurance Company issuing the rating for each of the past six (6) years. b) Provide a list of all OSHA/MOSH citation(s), the date of each occurrence, and their dispositions for the past five (5) years, from calendar years 2012 to 2017, against the lead contractor. c) Provide the lead contractor's OSHA 200/300A Summary Form from calendar years 2012 to present. Also, provide the lead contractor's Recordable Incidence Rates (RIR) and Lost Time Incidence Rates (LTIR) for each of the past five (5) years. 	Verify submittal of the Experience Modification Ratings, OSHA/MOSH citations, OSHA 200/300A Summary Forms, Recordable Incidence Rates (RIR's), and Lost Time Incidence Rates (LTIR's).	50

Poolesville Economic Development Project

		Structure of the Submissions	Written Evaluation	
Category	Tab #	Submittal Requirements	Criteria	Points
TECHNICAL EVALUATION FACTOR #4 – Past Performance	4.1	Past Performance – The Offeror shall prepare and send a Design-Build Reference Questionnaire Package to the Owner for each of the 3 projects identified in Tab #1.1. It is the Offeror’s responsibility to follow-up and encourage the references to complete and submit the questionnaire to the Montgomery County Revenue Authority. (See Document 1.4)		100
Total			Highest possible score for written submission evaluation.	800

NA = Not Applicable

Poolesville Economic Development Project

		Written Evaluation
1.	PASS/FAIL EVALUATION FACTORS	NA
2.	TECHNICAL EVALUATION Factor #1	250
3.	TECHNICAL EVALUATION Factor #2	200
4.	TECHNICAL EVALUATION Factor #3	250
5.	TECHNICAL EVALUATION Factor #4	100
TOTAL		800

End of Section – METHOD OF EVALUATION AND AWARD

SUBMISSIONS

ARTICLE 1 Written Submissions

- 1.1 FAILURE OF AN OFFEROR TO SUBMIT ALL REQUIRED SUBMISSIONS MAY RESULT IN THE OFFEROR'S SUBMISSION BEING REJECTED AS UNACCEPTABLE, AS DETERMINED BY THE CEO, MONTGOMERY COUNTY REVENUE AUTHORITY.

- 1.2 Standardized forms and documents are provided on the following pages. These documents shall be used by the Offerors for the Written Submission Phase of the REOI.

CONTACT INFORMATION

Contractor/Offeror's Name: (Offeror's name as it appears on license)

Check One:

- Corporation
- Limited Liability Company
- Partnership
- Sole Proprietor

Contact Person:

Address:

Phone:

Fax:

Email:

Contractor's License Number(s):

Document 1.3 Offeror’s Organizational and Business Structure

A. Current Organization and Structure of the Business

For Offerors That Are Corporations or Limited Liability Companies:

- 1a. Date incorporated or date when articles of organization were filed:
- 1b. Incorporated/organized under the laws of what state:
- 1c. Provide all the following information for each person who is either (a) an officer of the corporation/limited liability company (president, vice president, secretary, and treasurer), or (b) the owner of at least ten percent of the corporation’s stock or interest in the limited liability company.

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction firm/company that any person listed above has been associated with (as owner, general partner, limited partner, member or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or 10 percent or more of its stock or membership interest, if the business is a corporation or limited liability company.

Person’s Name	Construction Firm	Dates of Person’s Participation with Firm

For Offerors That Are Partnerships:

- 1a. Date of formation: _____
- 1b. Formed under the laws of what state: _____
- 1c. Provide all the following information for each partner who owns 10 percent or more of the firm.

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction firm/company that any partner has been associated with (as owner, general partner, limited partner, member or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Document 1.4

Similar Project Information Form

(Use additional sheets if required)

Use this form to provide information on projects you name as being representative of the quality of completed construction which your firm is capable of providing for this Project. Offeror may include supplemental information (photos etc.) in a format of the Offeror's choice.

Project Name:	Project Owner:
Project Address:	Owner's Address:
Project Architect Firm Name:	Owner's Current Contact Person and Title:
Telephone No.:	Telephone No.:
Architect's Project Manager:	Owner's Representative During Construction:
Value of Contractor's Construction Contract:	Total Value of Construction (in dollars):
\$	\$
Project Start Date:	Project Completion Date:
Project Manager(s) (list all who worked on Project):	Field Superintendent(s) (list all who worked on Project):

DESCRIPTION OF PROJECT:

CONSTRUCTION METHODS USED ON THIS PROJECT THAT DEMONSTRATE OFFEROR'S ABILITY TO CONSTRUCT QUALITY PROJECTS:

REQUEST FOR EXPRESSIONS OF INTEREST

PART II

CONTRACTING FORMS AND SUPPLEMENTS

Note: The documents in this Part are expected to be representative of the documents utilized in the Request for Design-Build Proposals (RDBP) corresponding to this REOI. However, the final RDBP documents may be different from the indicated forms.

Poolsville Economic Development Project **DESIGN – BUILD PROJECT**



MCRA

MONTGOMERY COUNTY REVENUE AUTHORITY

MONTGOMERY COUNTY REVENUE AUTHORITY

Document 2.1 Award Submissions

Successful Offerors will be required to complete and submit the following forms in this Article 2.3 before contract award.

Document 2.1.1 Performance Bond (FOR REFERENCE ONLY)

(95% of the Contract Amount)

_____, as surety ("Surety"), _____ and _____

_____ as principal ("Contractor"), enter into and execute this bond ("Performance Bond"), and bind themselves in favor of, the Montgomery County Revenue Authority, as obligee ("Owner"), in the initial amount of

\$ _____ (ninety-five percent (95%) of the Contract Sum or such greater amount as the Contract Sum may be adjusted to from time to time in accordance with the Contract between the Contractor and Owner) (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ (the "Contract") for construction of the Montgomery County Revenue Authority – Poolesville Economic Development Project in Montgomery County, Maryland (the "Project") and,

WHEREAS, the Owner has required the Contractor to furnish this Performance Bond as a condition to executing the Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

1. CONTRACT INCORPORATED; SURETY AND CONTRACTOR BOUND FOR FULL PERFORMANCE. The Contract is incorporated by reference and made a part of this bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents (as defined in the Contract) and all of their terms and conditions, both express and implied.
2. OWNER'S AFFIDAVIT OF CONTRACTOR BREACH OR DEFAULT. If the Owner shall provide to Surety the written affidavit of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such affidavit to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.
3. SURETY'S OBLIGATION UPON DELIVERY OF OWNER'S AFFIDAVIT OF CONTRACTOR'S BREACH OR DEFAULT. Upon the delivery of the Owner's affidavit of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
 - a. Proceed Itself. Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the

remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment bond must remain in full force and effect; or

- b. Tender a completing contractor acceptable to Owner. Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance bond and a separate payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the completing contractor; or
 - c. Tender the Full Penal Sum. Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract for fulfillment and completion of the Contract and the expiration of any applicable warranties; or
 - d. Other Acts. Take any other acts mutually agreed upon in writing by the Owner and the Surety.
 - e. IT SHALL BE NO DEFENSE TO SURETY'S OBLIGATION TO UNDERTAKE ONE OF THE PRECEDING COURSES OF ACTION THAT THE CONTRACTOR CONTENDS THAT IT IS NOT IN BREACH OR DEFAULT OF THE CONTRACT, OR THAT THE NOTICE OF BREACH OR DEFAULT WAS DEFECTIVE, OR THAT THE CONTRACTOR HAS RAISED ANY OTHER CLAIM OF DEFENSE OR OFFSET, PROVIDED ONLY THAT SURETY HAS RECEIVED THE AFFIDAVIT OF THE OWNER AS SPECIFIED IN PARAGRAPH 2.
4. SURETY'S ADDITIONAL OBLIGATIONS. In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for consultants testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) re-bidding costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
 5. SURETY'S WAIVER OF NOTICE. The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed.
 6. NO THIRD-PARTY BENEFICIARIES. The Surety provides this Performance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee

designated by attached rider, together with their heirs, administrators, executors, successors and assigns. No other party, person or entity has any rights against the Surety. Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY:

Name: _____
Attention: _____
Street: _____
City, State, Zip: _____

CONTRACTOR:

Name: _____
Attention: _____
Street: _____
City, State, Zip: _____

OWNER:

Montgomery County Revenue Authority
Keith Miller, Chief Executive Officer
101 Monroe Street, Suite 410
Rockville, Maryland 20850

- 8. STATUTE OF LIMITATIONS. Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Contract (including any warranty period) has not run or expired or within three (3) years following Final Completion of the Contract (including any warranty period) and acceptance of the Work performed under the Contract by the Owner, whichever is longer.
- 9. RECITALS. The recitals contained in this Performance Bond are incorporated by reference herein and are expressly made a part of this Performance Bond.
- 10. GOVERNING LAW. This Performance Bond shall be governed by, and construed in accordance with the laws of the State of Maryland without regard to its conflict of laws provisions.
- 11. VENUE. In the event any legal action shall be filed upon this Performance Bond, venue shall lie exclusively in the Circuit Court for Montgomery County, Maryland.

SIGNATURE PAGE FOLLOWS

Contractor:

Surety:

(Firm Name)

(Firm Name)

(SEAL)

(SEAL)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Date of Execution)

(Date of Execution)

END OF DOCUMENT

Document 2.1.2

Payment Bond (FOR REFERENCE ONLY)
(95% of the Contract Amount)

_____, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this bond ("Payment Bond"), and bind themselves in favor of, the Montgomery County Revenue Authority, as obligee ("Owner") in the initial amount of \$_____ (ninety-five percent (95%) of the Contract Sum or such greater amount as the Contract Sum may be adjusted to from time to time in accordance with the Contract between Contractor and Owner) (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated (the "Contract") for construction of the Montgomery County Revenue Authority – Poolesville Economic Development Project in Montgomery County, Maryland (the "Project") and,

WHEREAS, the Owner has required the Contractor to furnish this Payment Bond containing the terms and conditions set forth herein as a condition to executing the Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

1. The Contract is incorporated by reference and made a part of this Agreement. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents (as defined in the Contract) and all of their terms and conditions, both express and implied, and, without limitation, specifically including Contractor's obligation to pay for labor, materials, services and equipment provided in connection with the Contract performance;
2. For purposes of this Payment Bond, Beneficiary is defined as a person or entity who has actually provided labor, material, equipment, services or other items for use in furtherance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract and having:
 - a. a direct contract with the Contractor; or
 - b. a direct contract with a subcontractor or sub-subcontractor of the Contractor; or
 - c. rights, under the laws applicable in Montgomery County, Maryland, to file a lien, a claim or notice of lien, or otherwise make a claim against the Project, the Site, or against funds held by the Owner, if the Project is, or were, subject to such filing.
3. The Surety is not obligated hereunder to a Beneficiary other than a Beneficiary having a direct contract with the Contractor unless such Beneficiary has given written notice of its claim to the Contractor and the Surety within the longer of:
 - a. ninety (90) days after such Beneficiary provided labor, material, equipment, services or other items for use in furtherance of the Contract; or,
 - b. the period of time under the laws applicable in Montgomery County, Maryland for (1) filing of a lien, claim of lien, or notice of lien, if the Project is, or were, subject to such filing, or (2) otherwise making a claim against the Project or against funds held by the Owner; stating the amount claimed and identifying, by name and address, the person or entity to whom such labor, material, equipment, services or other items were provided.

4. In no event is the Surety obligated hereunder for sums in excess of the Penal Sum.
5. Upon receipt of a claim from a Beneficiary hereunder, the Surety must promptly, and in no event later than thirty (30) days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
 - a. making payment of all sums not in dispute; and,
 - b. stating the basis for disputing any sums not paid.
6. No action shall be commenced by a Beneficiary hereunder after the passage of the longer of one (1) year following final completion of the Contract (including any warranty period) and acceptance of the Work performed under the Contract by the Owner or any limitation period provided under the laws applicable in Montgomery County, Maryland.
7. The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed.
8. All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY:

Name: _____
 Attention: _____
 Street: _____
 City, State, Zip: _____

CONTRACTOR:

Name: _____
 Attention: _____
 Street: _____
 City, State, Zip: _____

OWNER:

Montgomery County Revenue Authority
 Keith Miller, Chief Executive Officer
 101 Monroe Street, Suite 410
 Rockville, Maryland 20850

9. The recitals contained in this Payment Bond are incorporated by reference herein and are expressly made a part of this Payment Bond.
10. This Payment Bond shall be governed by, and construed in accordance with the laws of the State of Maryland without regard to its conflict of laws provisions.
11. In the event any legal action shall be filed upon this Payment Bond, venue shall lie exclusively in the Circuit Court for Montgomery County, Maryland.

SIGNATURE PAGE FOLLOWS

Contractor:

Surety:

(Firm Name)

(Firm Name)

(SEAL)

(SEAL)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Date of Execution)

(Date of Execution)

END OF DOCUMENT

Document 2.1.3 Offeror's Certification of Cost and Price (FOR REFERENCE ONLY)

The CEO, Montgomery County Revenue Authority has the authority to require that contract cost and pricing principles are followed. Cost and Pricing Data must be submitted by offerors or contractors in the attached format prior to the execution of any contract or contract amendment based on the following:

1. A competitively negotiated contract valued at more than \$100,000.
2. A non-competitive contract valued at more than \$50,000.
3. Any contract modification for which the price adjustment is expected to exceed \$50,000, except contract modifications that is fully in accordance with the terms and conditions of the contract.
4. Any other contracts or contracts modification, as may be required by the Montgomery County Revenue Authority CEO.

OFFEROR'S CERTIFICATION

This cost proposal reflects our best estimates and/or actual costs as of this date and conforms to the cost exhibits and schedules provided by the Montgomery County Revenue Authority. By submitting this proposal, the offeror grants the contracting officer or an authorized representative the right to examine, as the basis for pricing that will permit an adequate evaluation of the proposed price, books, records, documents, and other types of factual information, if specifically referenced or included in the cost proposal.

The offeror also agrees that the price to the Montgomery County Revenue Authority, including profit or fee, may, at the option of the Montgomery County Revenue Authority, be adjusted to reduce the price to the Montgomery County Revenue Authority to the extent that the price was based on inaccurate, incomplete, or non-current data supplied by the offeror.

Name

Title

Name of Firm

Date of Submission

Signature of Authorized Representative

End of SECTION – AWARD SUBMISSIONS

**UNIT PRICE CONSTRUCTION CONTRACT BETWEEN
OWNER AND CONTRACTOR (FOR REFERENCE ONLY)**

This UNIT PRICE CONSTRUCTION CONTRACT (the "Contract") BETWEEN OWNER AND CONTRACTOR (Owner and Contractor together the "Parties") is made and entered into by and between MONTGOMERY COUNTY REVENUE AUTHORITY (MCRA) a body corporate and politic (the "Owner") and _____, INC. (the "Contractor").

This Contract is effective on the date executed by the Chief Executive Officer of the Montgomery County Revenue Authority.

This Contract is for the design and construction of a project identified as the Poolesville Economic Development Project (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree:

1. DOCUMENTS INCORPORATED BY REFERENCE

(A) This Contract consists of this Contract and any documents referenced in this Contract or in any of the following exhibits:

- (1) Drawings and Documents for the Project identified on **Attachment A**;
- (2) [Intentionally Omitted];
- (3) Supplemental Conditions of Construction Contract, if any;
- (4) Mandatory Insurance Requirements; (**Attachment**)
- (5) Performance and Payment Bonds; (**Attached Pages 21 and 27**)
- (6) addenda to any of the foregoing;
- (7) modifications issued hereafter to any of the foregoing; (8) Notice to Proceed;
- (8) Master Schedule and Critical Contract Completion Period as amended by agreement of the parties; and

(B) All of these documents referenced in this Article 1 together are collectively referred to as the "Contract" or "Contract Documents". Documents not included or expressly referenced in this Article 1 do not form any part of this Contract. Capitalized terms used in this Contract have the meaning ascribed to them in the Contract. **Geotechnical studies, including but not limited to boring logs, are not provided by the Owner and shall not be considered as part of the Contract Documents and are not and shall not be considered as part of the Drawings.**

2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

The Contractor makes the following representations and warranties in order to induce the Owner to execute this Contract. The Contractor recognizes that, in making these representations and warranties, Owner is entitled to rely upon the Contractor's representations and warranties and is relying upon them in entering into this Contract. The Contractor, by executing this Contract, makes the following express representations and warranties to the Owner:

(A) The Contractor is fully qualified to act as the Contractor and perform the Work for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Contractor for, and to construct, the Work for the Project.

(B) The Contractor has become familiar with the Project Site and the local conditions under which the Project is to be constructed and operated.

(C) The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the Drawings and Specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction of the Work for the Project. Contractor is responsible for performing Work shown on the Contract Documents, including reasonably implied or inferred Work from the Contract Documents, which a reasonably prudent contractor of Contractor's reputation, expertise and experience would conclude were inferable from the Contract Documents. The Contractor is obligated to conduct a careful and thorough pre-Bid review of all of the Drawings and Specifications and to inform the Owner prior to Contract execution of any errors, omissions, or conflicts in the Drawings or Specifications or other issues in the Contract Documents which will either increase the Contract Sum or extend the Contract Time. Contractor's performance with respect to its review of the Contract Documents and specifically the Drawings and Specifications shall be that of an experienced contractor performing work of a similar nature in the locale of the Project. Contractor will not be compensated for the performance of any additional or change order work or for any delays or cumulative impact, lost efficiency, or lost productivity arising from any errors, omissions or conflicts or other issues in the Drawings and Specifications or Contract Documents which Contractor or a reasonably prudent contractor of Contractor's reputation, expertise and experience should have discovered as a result of such review.

3. INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

(A) This Contract (which includes all Contract Documents) constitutes the entire and exclusive agreement between the parties with reference to the Work and the Project. This Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

(B) Anything that may be required, implied, or inferred by the documents that make up this Contract, or any one or more of them, must be provided by the Contractor for the Contract Sum within the Contract Time.

(C) Nothing contained in this Contract creates, nor is to be interpreted to create, privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor or between the Contractor and any other person or entity except the Owner.

(D) When a word, term, or phrase is used in this Contract, it is to be interpreted or construed first, as defined in the Contract including any supplemental terms and conditions

of the Contract, if any; second, if not defined, according to Referenced Standards and its generally accepted meaning in the construction industry; and third, if there are no Referenced Standards or generally accepted meaning in the construction industry, according to its common and customary usage.

(E) The words "include", "includes", or "including", as used in this Contract, are deemed to be followed by the phrase, "without limitation".

(F) The specification in this Contract of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract does not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition is to be deemed not to constitute a material breach of this Contract.

(G) The Contractor has a continuing duty to read, examine, review, compare, and contrast each of the Contract Documents that make up this Contract, including Shop Drawings, and other Submittals, and must give written notice to the Owner and the Consultant of any conflict, ambiguity, error, or omission which the Contractor may find with respect to the Contract Documents, the Shop Drawings, and other Submittals that come to the attention of Contractor during the course of the Work and before proceeding with any part of the Work affected by the conflict, ambiguity, error, or omission. The express or implied approval by the Owner or the Consultant of any Shop Drawings or other Submittals does not relieve the Contractor of the continuing duties imposed by this Contract, nor is any such approval evidence of the Contractor's compliance with this Contract. The Owner has requested the Consultant only to prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH CONTRACT DOCUMENTS. The Contractor again acknowledges and represents that it has received, reviewed, and carefully examined all of the Contract Documents, has found them to be complete, accurate, adequate, consistent, coordinated, and sufficient for construction of the Work for the Project, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning the Contract Documents, as no such representations or warranties have been or are made by the Owner.

(H) In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following shall control:

- (1) As between figures given on Drawings and scaled measurements, the figures govern;
- (2) As between large scale Drawings and small scale Drawings, the most stringent will govern; and
- (3) As between Drawings and Specifications, the most stringent will govern.

4. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The Contract Documents, and each of them, as well as any other documents furnished by the Owner, remain the property of the Owner. The Contractor must not use, or permit to be used, any portion or all of the Contract Documents or other documents furnished by the Owner on other projects without the Owner's prior written authorization.

5. CONTRACTOR'S PERFORMANCE

The Contractor must perform all of the Work required, implied or reasonably inferable from the Contract Documents including, but not limited to, the following:

- (A) Construction of the Work (including all warranty work) for the Project.
- (B) The furnishing and maintenance of all required surety bonds, insurance, Warranties, and related documentation.
- (C) The provision or furnishing, and prompt payment, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction of the Work for the Project, and all necessary permits and licenses required for the construction of the Work for the Project, as provided in the Contract.
- (D) Full, prompt, and complete compliance with all of the Contract Documents.

6. TIME FOR CONTRACTOR'S PERFORMANCE

(A) The Contractor must commence the performance of this Contract upon Notice to Proceed as set forth in the Contract and outlined in attached project timeline. The Contractor must diligently perform under the Contract and complete the Work without interruption through final completion of the Work for the Project. **The Contractor must achieve Substantial Completion of the Work for the Project within the time period specified in the Notice of Proceed.**

(B) The Contractor must promptly notify the Owner and Consultant in writing when Substantial Completion has been achieved.

(C) The Contractor must notify the Owner and Consultant in writing when the Project is finally complete and the Contractor is ready for a final inspection.

(D) **The Contractor must pay the Owner the sum of Three Thousand Dollars (\$3,000.00) as Liquidated Damages for each day of unexcused delay beyond the date set forth above for Substantial Completion. If the Contractor fails to achieve Final Completion within thirty (30) days after Substantial Completion, the Contractor must pay the Owner the sum of Three Thousand Dollars (\$3,000.00) as Liquidated Damages per day for each day of unexcused delay.** When the Owner reasonably believes that Substantial or Final Completion will be inexcusably delayed, the Owner is entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover Liquidated Damages applicable to the Delays. If and when the Contractor overcomes any unexcused Delay in achieving Substantial or Final Completion, or any Delay, for which the Owner has withheld payment, the Owner will promptly release to the Contractor those funds withheld, but no longer applicable, as Liquidated Damages.

(E) The Contractor's payment of any Liquidated Damages to the Owner is in addition to and not exclusive of any other remedies available to the Owner under the terms of this Contract or the Contract Documents.

(F) All limitations of time applicable to the Contractor set forth in this Contract and the Contract Documents are material and are of the essence of this Contract.

7. UNIT PRICE CONTRACT PAYMENTS

(A) The Owner will pay, and the Contractor accepts, as full and complete payment for the Contractor's timely performance of its obligations under this Contract, based on the unit prices stipulated in the Contractor's proposal (as negotiated) hereto attached, for quantities of work satisfactorily completed, an amount not-to-exceed the contract sum of _____ (\$_____). The sum set forth in this Article 7 (A) constitutes the estimated Contract Sum. The exact amount paid will be based on the actual quantities of work completed in an acceptable manner which cannot be modified except as provided in the Contract or by written Amendment executed by the parties to the Contract.

(B) The Contractor is bound by the unit price line items apportioning the Contract Sum among the different elements of the Work for the Project for purposes of periodic and final payment as provided in the Contract. The Contractor's unit price line items must not be inflated, unbalanced or misstated in any way to give the Contractor an unfair advantage during the Bid or Proposal or construction processes. The violation of this provision by the Contractor constitutes a material breach of this Contract. The Contractor's unit price line items as approved by the Owner and Consultant as provided in the will be utilized for the Contractor's Applications for Payment.

(C) The Owner will pay the Contract Sum to the Contractor, less amounts established for retainage. All Applications for Payment must be in the format, and include all supporting information, required by the Contract Documents as well as any other information required by the Owner the Consultant, or both. The Owner and Consultant will approve in writing the amount that, in the opinion of the Consultant, is properly owing to the Contractor and certify the amount of payment then due to the Contractor as provided in the Contract. The Owner will make payment to the Contractor as required by the Contract. The amount of each such payment will be made in the amount approved for payment in accord with the Contract less any amounts that the Contractor owes the Owner or which the Owner has the right to withhold under the Contract Documents. As a condition precedent to payment, the Contractor must, if required by the Owner, furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all Subcontractors, materialmen, laborers, Suppliers, or others having lien rights, in which the Subcontractors, materialmen, laborers, Suppliers, or others having lien rights, acknowledge receipt of all sums due pursuant to all prior Applications for Payment and waive and relinquish any liens, lien rights, or other claims relating to the Project Site or the Work. Furthermore, the Contractor warrants and represents that, upon payment of the Application for Payment submitted, title to all Work included in the payment is vested in the Owner. The Owner's right to require lien waivers as a precondition to payment is solely for the benefit of the Owner and shall not be construed to give any third party, including specifically any Subcontractors, materialmen laborers, Suppliers, or others having lien rights, or surety on any payment or performance bonds any rights nor make the Owner liable to any of them as a consequence of the Owner's decision or failure to request or obtain such lien waivers as a precondition to payment.

(D) When payment is received from the Owner, the Contractor must immediately pay all Subcontractors, materialmen, laborers, and Suppliers the amounts they are due for the Work covered by such payment, as provided in the Contract. The Owner will have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due under the Contract naming the Contractor and any such Subcontractor, materialmen, laborer, or Supplier as

joint payees. Such joint check procedure, if employed by the Owner, does not create any rights in favor of any person or entity beyond the right of the named payees to payment of the check and does not require the Owner to repeat the procedure in the future.

(E) Neither payment to the Contractor, utilization of the Work or the Project for any purpose by the Owner, nor any other act or omission by the Owner is to be interpreted or construed as an acceptance of any Work of the Contractor that is not strictly in compliance with construction industry standards and the requirements of this Contract.

(F) The Owner has the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Contractor due to any reason stated in the Contract. The Contractor must immediately comply with any written demand by the Owner for repayment or reimbursement of the Owner for any amounts previously paid by the Owner as contemplated in this Article.

(G) The Contractor has no right to stop Work as a consequence of non-payment. In the event of any dispute between the Contractor and Owner involving the Contractor's claim to entitlement to payment the Contractor's only remedy is to file a claim with the Contract Administrator as provided in the Contract. The Contractor must diligently proceed with the Work pending resolution of the dispute. Any payments on Certificates for Payment which are approved by the Owner as "proper invoices" within the meaning of applicable laws and regulations not made within thirty (30) days after the Owner approves the Certificate for Payment shall bear interest at a rate equivalent to the interest rate paid by 5-year U.S. Treasury Bills as of the date interest first begins to accrue. An Owner approved Certificate for Payment is one that has been certified as required by the Consultant, and signed by the Owner's Construction Representative, the Owner's Project Manager, and the Revenue Authority's CEO or designee and fully complies with all contract requirements.

(H) Prior to being entitled to receive final payment, and as a condition precedent to final payment, the Contractor must furnish the Owner all items required in Section _____ of the Contract in the form and manner required by Owner, with a copy to the Consultant.

8. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

(A) The Owner will, if requested by the Contractor, furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the Site of the Project, upon execution by the Contractor of the disclaimer form referenced in the proposal documents. Such WRITTEN AND TANGIBLE MATERIAL IS FURNISHED TO THE CONTRACTOR ONLY IN ORDER TO MAKE COMPLETE DISCLOSURE OF SUCH MATERIAL AS BEING IN THE POSSESSION OF THE OWNER AND FOR NO OTHER PURPOSE. BY FURNISHING SUCH MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER INWHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR AT ALL, AND HAS NO LIABILITY FOR ANY STATEMENTS OR REPRESENTATIONS MADE IN THE WRITTEN AND TANGIBLE MATERIAL FURNISHED UNDER THIS PROVISION. The Owner shall also furnish, if appropriate, the legal description of the Project Site, and any required survey in the Owner's possession or under the Owner's control.

(B) Deleterious materials shall be dug and hauled to an accessible off-site location designated by the Contractor. Determination of deleterious material shall be made jointly by Owner and Contractor. Contractor shall install suitable replacement backfill as needed, reusing as much excavated material for bedding as possible. Cost of labor to transport and install backfill from a location off site shall be included in the unit price for muck excavation provided with the bid proposal.

- a. Extraordinary Excavation – The amount provided in Section 8 (B) above does not include rock hammers or blasting.
- b. The Owner and Contractor must come to a mutual agreement on what requires the use of rock hammers or blasting, and will then agree to the billable cost to the Owner on a case by case basis.

9. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations, and responsibilities of the Contractor set forth in this Contract, the Contractor has and must perform the following duties, obligations, and responsibilities:

(A) The Contractor must continually perform its duties set forth in Article 3(G). The Contractor must not perform Work without adequate Drawings and Specifications, or, as appropriate, approved Shop Drawings, or other Submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency, or omission in the Contract, without first providing written notice to the Consultant and Owner, the Contractor is responsible for the Work and must pay all costs of correcting it.

(B) All Work must conform strictly to the requirements of the Contract.

(C) The Contractor must strictly supervise the performance and completion of the Work, and must monitor the Work as it progresses. The Contractor is strictly liable for all acts and omissions of those engaged in the Work on behalf of the Contractor.

(D) The Contractor warrants that all labor furnished under this Contract will be competent to perform the tasks undertaken; that the product of such labor will yield only first-class results; that all materials used in the Work and equipment provided will be new and of high quality; that the Work will be complete, of high quality, without defects, when completed; and that all of the Work will strictly comply with the requirements of the Contract. Any Work not strictly complying with the requirements of the Contract will be a breach of the Contractor's warranty.

(E) The Contractor must obtain and pay for all required permits, fees, and licenses as set forth in the Contract, in any Supplemental Conditions of Construction Contract and in any other Contract Documents. The Contractor must comply with all Laws and Regulations applicable to the Project and to the Work.

(F) The Contractor must employ and maintain at the Project Site only competent supervisory personnel. Key personnel must be assigned by the Contractor to this Project and may be changed only as provided in the Contract.

(G) The Contractor must provide the Owner and the Consultant its Construction Project Progress Schedule in accordance with the requirements of the Contract. The Progress Schedule must conform to the General Conditions of Construction Contract, be in the format specified in the Contract Documents, and otherwise be acceptable to the Owner. The Contractor's Progress Schedule must be updated no less frequently than weekly and must be updated to reflect the current progress of the Work, any conditions that change the critical path or the dates for Substantial or Final Completion of the Work, and any additions or changes to the Work. Each such revision is to be furnished to the Owner and the Consultant. Strict compliance with the requirements of this Article 9(G) is a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with these requirements constitutes a material breach of this Contract.

(H) The Contractor must keep an updated copy of the Contract, as amended by any Supplemental Conditions of Construction Contract, and an updated posted set of the plans and specifications reflecting any and all changes at the Project Site. Additionally, the Contractor must keep a copy of, and a log of, approved Shop Drawings and other Submittals and copies of, and a log of, all Requests for Information (RFIs) and Supplemental Instructions (SIs) issued with respect to the Work or the Project at the Site at all times. All of these items shall be available to the Owner and the Consultant during all regular business hours. Upon Final Completion of the Work, all of these items must be finally updated and provided to the Owner and will be the property of the Owner.

(I) Shop Drawings and other Submittals from the Contractor are not Contract Documents and are not part of the Contract. The Contractor must not do any Work requiring Shop Drawings or other Submittals unless the Shop Drawings and Submittals have been approved in writing by the Consultant. All Work requiring approved Shop Drawings or other Submittals must be done in strict compliance with the Contract Documents. However, approval by the Consultant or the Owner is not evidence that Work installed pursuant to the Shop Drawings or Submittals conforms to the requirements of this Contract. The Owner and the Consultant have no duty to review partial Submittals or incomplete Submittals. The Contractor must maintain a Submittal log which must include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor has the duty to carefully review, inspect, and examine any and all Submittals before submitting them to the Owner or the Consultant.

(J) The Contractor must maintain the Project Site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Contractor must thoroughly clean the Project Site of all debris, trash and excess materials or equipment as provided in the Contract.

(K) At all times relevant to this Contract, the Contractor must permit the Owner and the Consultant to enter upon the Project Site and to review or inspect the Work without formality or other procedure.

10. CONTRACT ADMINISTRATOR AND PROJECT CONSULTANT

The Contract Administrator for this Project is:

Michael Boone, CFO
Montgomery County Revenue Authority
101 Monroe Street, Suite 410
Rockville, MD 20850
Office Phone: (301) 762-9080
Fax: (301) 309-0652
mboone@mcra-md.com

The Consultant is:

THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE CONSULTANT. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE CONSULTANT. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE CONSULTANT TO THE OWNER.

11. CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the Owner are subject to the following terms and conditions: TBD

12. SUBCONTRACTORS

Within the time and conditions provided in the Contract, the Contractor shall identify to the Owner and the Consultant, in writing, those persons or entities previously identified in the Bid or Proposal that will be the Subcontractors on the Project. The Owner will state in writing any objections the Owner may have to one or more of such Subcontractors as provided in the Contract. The Contractor must not enter into a subcontract with a Subcontractor to whom the Owner objects. All subcontracts shall afford the Contractor rights against the Subcontractor that correspond to those rights afforded to the Owner against the Contractor, including those rights of Contract termination as set forth in the Contract. Any replacement Subcontractors must be acceptable to the Owner.

13. CHANGE ORDERS

The Owner may order one or more changes to the Work within the general scope of this Contract. The Contractor must proceed with any such changes, and any Contractor claim regarding any such change must be made in strict accordance with of the Contract.

(A) The Contractor must notify and obtain the consent and approval of the Contractor's Surety with reference to all Change Orders if such notice, consent or approval is required by the Owner, the Consultant, the Contractor's Surety or by law. The Contractor's performance of Change Order Work constitutes the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order Work AND THE SURETY SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN NOTIFIED OF SUCH CHANGE ORDER WORK AND TO HAVE EXPRESSLY CONSENTED TO THE CHANGE ORDER WORK.

(B) ANY CLAIM ABOUT AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM DUE TO A CHANGE MUST BE GIVEN IN WRITING TO THE OWNER AND CONSULTANT AS PROVIDED IN SECTION _____ OF THIS CONTRACT, OR THE CLAIM IS WAIVED. Any failure to agree upon an adjustment in the Contract Time or Contract Sum must be resolved under Section _____ of the Contract. The Contractor must proceed with the prosecution of the Work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this Article.

14. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

Inspection and correction of the Work and Contractor's warranties shall be as provided in Section _____ of the Contract.

15. NO TERMINATION BY THE CONTRACTOR

The Contractor does not have a right to terminate the Contract. As provided in Section _____ of the Contract, the Contractor has no right to stop Work on the Project. In the event of any dispute between Contractor and Owner involving the Contractor's claim to entitlement to any

payment, the Contractor, as required by Section _____ of the Contract, must diligently proceed with the Work pending resolution of the dispute.

16. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

The Owner's right to suspend or stop Work as provided in Section _____ of the Contract.

17. TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with Article 15 of the General Conditions of Construction Contract.

18. INSURANCE

The Contractor must comply with the insurance requirements set forth in the Bid or Proposal Documents and Section _____ of the Contract.

19. SURETY BONDS

The Contractor must furnish separate performance and payment bonds to the Owner in the forms prescribed in the Bid or Proposal Documents and Section _____ of the Contract. The performance and payment bonds must set forth a penal sum in an amount not less than 95% of the Contract Sum. Each bond furnished by the Contractor must incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in the bonds. The penal sum of both the performance and payment bonds will be automatically increased in the amount of any increase to the Contract Sum. The performance and payment bonds furnished by the Contractor must be in the forms prescribed in the Bid or Proposal Documents and Section _____ of the Contract. The Surety must be a corporate Surety authorized to do business in the State of Maryland and acceptable to the Owner. While determining Surety acceptability, the Owner may make such investigations as he deems necessary to determine the ability of the Contractor's Surety to perform its duties and obligations and the Contractor shall furnish to the Owner, within five (5) days of Owner request, all such data and information for this purpose as the Owner may request. The Owner reserves the right, in its absolute discretion and for any reason, to accept or reject any Surety proposed by the Contractor.

20. PROJECT RECORDS

The Contractor must make available to the Owner and the Consultant all or any part of any documents relating in any manner to the Project that are in the possession of the Contractor or any Subcontractor of the Contractor (the "Project Records") for inspection and copying at any reasonable time upon request by the Owner or the Consultant. The Contractor must make the Contract Documents, Record Documents, and any Project Records available for inspection and copying by any state, federal, or other regulatory authority at any time upon the request of either the Owner or the state, federal, or other regulatory authority requesting the right to inspect or copy the Contract Documents, Record Documents, or Project Records. The Project Records include, but are not limited to, all written records concerning the Project, all drawings, printouts, disks, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things that document the Project, its design, and its construction, including the Record Documents, as defined in the Contract. The Project Records expressly include those documents reflecting the cost of construction to the Contractor, including the Contractor's Bid sheet(s) and/or Bid calculation takeoffs and estimates. The Contractor shall maintain and protect these documents for no less than four (4) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

21. APPLICABLE LAW

This Contract must be construed under the law of the State of Maryland, without regard to conflicts of law provisions.

22. SUCCESSORS AND ASSIGNS

This Contract is binding on the Parties and their respective successors, heirs, and assigns. The Contract must not be assigned without prior written consent of the Owner and except as otherwise provided in this Contract.

SIGNATURE PAGE FOLLOWS

Owner:

MONTGOMERY COUNTY REVENUE AUTHORITY

(Signature)

Keith Miller

Chief Executive Officer

(Date)

Witness:

(Signature)

Michael Boone

Chief Financial Officer

Contractor:

(Company Name)

(Signature)

(Print Name)

(Print Title)

(Date)

Witness:

(Signature)

(Print Name)

(Print Title)

NAME AND SIGNATURE REQUIREMENTS FOR BIDS AND CONTRACTS

The correct legal business name of the Offeror must be used. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different. Corporations must have names that comply with State Law. The Offeror's signature must conform to the following: All signatures must be made by an authorized officer, partner, manager, or employee. The signing of an Offer or a Contract is a representation and certification by the person signing that the person is authorized to sign the Offer or Contract on behalf of the Offeror or Contractor.

End of SECTION – CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR

SECTION – ATTACHMENT A – SCHEDULE OF DOCUMENTS

The Montgomery County Revenue Authority – Poolesville Economic Development Project
– Bid Drawings

The Montgomery County Revenue Authority – Poolesville Economic Development Project
– Bid Specifications

The Montgomery County Revenue Authority – Poolesville Economic Development Project
– Insurance Requirements

The Montgomery County Revenue Authority – Poolesville Economic Development Project
– Supplemental Terms and Conditions, if applicable

SECTION – MANDATORY INSURANCE REQUIREMENTS (FOR REFERENCE ONLY)

MANDATORY INSURANCE REQUIREMENTS – MCRA Poolesville Economic Development Project

Prior to the execution of the contract by the Montgomery County Revenue Authority, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Montgomery County Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the Montgomery County Revenue Authority, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of **three million dollars (\$3,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Builder's All Risk Property Insurance

The contractor shall provide a Builder's All Risk Policy including fire and extended coverage to protect the interest of the Montgomery County Revenue Authority, contractor and sub-contractors against loss caused by the perils insured in the amount of 100 percent of the insurable values of the project. The coverage must be written on a completed value form. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence. The policy must name the Montgomery County Revenue Authority as loss payee.

Automobile Liability Coverage

A minimum limit of liability of **one million dollars (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County Revenue Authority, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Thirty (30) days written notice of cancellation or material change of any of the policies is required.

Certificate Holder

Montgomery County Revenue Authority
101 Monroe Street, Suite 410
Rockville, Maryland 20850

End of SECTION – MANDATORY INSURANCE REQUIREMENTS