REQUEST FOR PROPOSAL NO. P-257

MULTI-SYSTEMIC THERAPY FOR EMERGING ADULTS

Due Date: 3/18/20, Time: 3:00 PM

AMENDMENT NO. 1
DATED 3/6/20

AMBER BUTCHER, STAFF BUYER
PHONE: 410-887-3887
EMAIL: abutcher@baltimorecountymd.gov

PLEASE SIGN BELOW ACKNOWLEDGING RECEIPT OF THIS ADDENDUM AND RETURN WITH YOUR BID.

__________________________________________________________________________
Company Name                                           Signature
1. Please see Attached Sign in Sheet.

2. See attached BAA, this document will be part of the Agreement.

3. Remove or DO NOT USE Indirect Cost in Budget Form 432B

4. In General Conditions 8 correct to read:

8. **EVALUATION OF OFFERS.** Award will be made to the responsible offeror whose proposal best meets the needs of the County as set forth herein.

   8.1 Proposals will be evaluated based on the following criteria, listed in order of importance.

   8.1.1 Organization, skills and proficiency in providing the required services outlined in this RFP.

   8.1.2 Demonstrated experience and technical qualifications.

   8.1.3 Fiscal and administrative structure, length of time providing these services, as well as demonstration of ability to provide all of the appropriate services along with resources.

   8.1.4 References.

   8.1.5 Economic Benefit Factor and/or MBE/WBE subcontracting

   8.1.6 Degree of completeness of response to the RFP and degree to which the offeror followed instructions for submittal.

   8.1.7 Cost.

5. Regarding General Condition 11, Technical and Price Proposals needs one original with 5 copies. However, the MBE/WBE Proposal only requires one original.

6. Replace the MBE/WBE Plan Package (pg 20-34) with the updated MBE/WBE Plan Package.

7. All other terms and conditions remain the same.
This Business Associate Agreement (the “Agreement”), effective as of this _____ day of __________, 20___ is by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic (the “County”) on behalf of the Baltimore County [DEPARTMENT OR AGENCY] (known jointly and severally as “Covered Entity”), and [AWARDED VENDER], (“Business Associate”) and supplements and is made a part of the Agreement (“Underlying Agreement”) entered into as of ______ day of __________, 20___ by and between Covered Entity and Business Associate.

RECITALS

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in the Underlying Agreement pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in HIPAA including all pertinent regulations (45 C.F.R. Parts 160 and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); and

WHEREAS, execution of this Agreement is not an admission that a business association relationship exists between the Covered Entity and Business Associate as defined in HIPAA.

WHEREAS, the nature of the arrangements memorialized in the Underlying Agreement may require Business Associate to access, use, exchange, and disclose certain electronic patient information maintained by the Covered Entity which may include the following: (i) Protected Health Information (“Information”) as that term is defined under HIPAA, including all pertinent regulations, codified at 45 C.F.R. Parts 160 and 164, as amended by HITECH, and as may be further amended in the future; (ii) Personal Information (“PI”) as that term is defined under the Maryland Personal Information Protection Act (“PIPA”) (Md. Ann. Code, Commercial Law, §14-3501 et seq.); or (iii) medical record information protected by the Maryland Confidentiality of Medical Records Act ("Maryland Medical Records Law") (Md. Ann. Code, Health General §§ 4-301 et seq.) (the information described in items (i) through (iii) is hereinafter collectively and individually referred to as “Protected Health Information”, and the HIPAA, HITECH, PIPA, and Maryland Medical Records Law are hereinafter collectively referred to as “Confidentiality Laws”);

WHEREAS, in consideration of the covenants herein, the Covered Entity and Business Associate desire to enter into this Agreement for the purpose of ensuring compliance with the Confidentiality Laws;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Covered Entity and Business Associate agree as follows:
DEFINITIONS

Terms used but otherwise not defined in this Agreement shall have the same meaning ascribed to those terms in HIPAA, HITECH, and any current and future regulations promulgated under HIPAA or HITECH.

A. “Breach” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Regulations”) which compromises the security or privacy of the Information. “Breach” shall not include:

   i. Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Regulations; or

   ii. Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the Protected Health Information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Regulations; or

   iii. A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief than an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

B. “Designated Record Set” means a group of records maintained by or for a Covered Entity that is (a) the medical and billing records about Individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) Protected Health Information used in whole or in part by or for the Covered Entity to make decisions about Individuals.

C. “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information that is transmitted by or maintained in electronic media as defined by the HIPAA Security Regulations.

D. “Individual” shall have the meaning as the term “individual” in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

E. “Individually Identifiable Information” means information that is a subset of health information, including demographic information collected from an individual, and:

   i. is created or received by a health care provider, health plan, employer or health clearing house; and

   ii. relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and:

      (a) that identifies the individual; or

      (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

F. “HIPAA Privacy Regulations” shall mean the Standards for Security of Individual Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.

H. “HITECH Standards” means the privacy, security, and security Breach notification provisions applicable to a Business Associate under Subtitle D of HITECH and any regulations promulgated thereafter.

I. “Protected Health Information” or “PHI” shall have the same as the term “protected health information” in 45 C.F.R. §160.103 (as amended by HITECH), limited to the information created or received by Business Associate from or on behalf of Covered Entity including, but not limited to Electronic PHI.

J. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. §160.501.

K. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

L. “Unsecured Protected Health Information” shall mean PHI that is not secured through the use of technology or methodology specified by the Secretary in regulations or as otherwise defined in Section 13402(h) of HITECH.

1. Limited Use or Disclosure of Information. Except as otherwise limited in this Agreement, Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law. Business Associate may:
   i. use and disclose Protected Health Information to perform the services agreed to by the Covered Entity and Business Associate; or
   ii. use or disclose Protected Health Information for the proper management and administration of Business Associate or in accordance with its legal responsibilities; or
   iii. use Protected Health Information to provide data aggregation services relating to health care operations of Covered Entity; or
   iv. use or disclose Protected Health Information to report violations of law to law enforcement; or
   v. use Protected Health Information to create de-identified Protected Health Information consistent with the standards set forth at 45 C.F.R. §164.514.

2. Safeguards. Business Associate agrees to use and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

3. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.

4. Agents and/or Subcontractors. Business Associate agrees to require any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, to agree to the same restrictions and conditions that apply throughout this Agreement to Business Associate with respect to such information.

5. Notice of Use or Disclosure, Security Incident or Breach. Business Associate shall promptly notify Covered Entity of a Breach of Unsecured Protected Health Information following the first day on which Business Associate, or Business Associate’s employee, office and/or agent knows or should have known of such Breach. Business Associate’s notification hereunder shall:
   i. notify the designed Privacy Officer of the Covered Entity;
ii. notify the Covered Entity no more than thirty (30) days following discovery of a Breach, except where a law enforcement official determines that notification would impede a criminal investigation or cause damage to national security;

iii. be substantially in the same form as Exhibit A attached hereto.

6. Notice to Covered Entity. Any notice required under this Agreement to be given to Covered Entity shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or at such other address and/or such other individual as a party may identify in writing to the other party:

Baltimore County HIPAA Privacy Officer
c/o Baltimore County Department of Health
6401 York Road, 3rd Floor
Baltimore, MD 21212

7. Access. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably requested by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual. Business Associate may charge Covered Entity or Individual for the actual labor cost involved in providing such access.

8. Amendments. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees, upon request of Covered Entity or an Individual.

9. Disclosure of Practices, Books and Records. Business Associate agrees to make internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity or the Secretary in a time and manner designated by the Covered Entity or Secretary, for the purposes of the Secretary in determining the Parties compliance with HIPAA, the HITECH Act and corresponding regulations.

10. Accounting. Business Associate agrees to provide to Covered Entity an accounting of Protected Health Information disclosures made by Business Associate, including disclosures made for treatment, payment and health care operations. The accounting shall be made within a reasonable amount of time upon receipt of a request from Covered Entity.

11. Minimum Necessary. To limit its uses and disclosures of, and requests for, Protected Health Information (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 C.F.R. §164.502(b), to the minimum amount of Protected Health Information necessary to accomplish the intended purpose of the use, disclosure or request.

12. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

13. Prohibited Uses and Disclosures. Business Associate shall not sell Protected Health Information or use or disclose Protected Health Information for marketing or fund raising purposes as set forth in HITECH.
14. **Term.** The Term of this Agreement shall be effective as of the date of the Underlying Agreement is effective, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the provisions of this Section II.

15. **Termination for Breach.** The Covered Entity may terminate the Underlying Agreement and/or this Agreement if the Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternately, the Covered Entity may choose to provide Business Associate with notice of the existence of an alleged material breach and afford Business Associate an opportunity to cure the alleged material breach. In the event Business Associate fails to cure the breach to the satisfaction of the Covered Entity, the Covered Entity may immediately thereafter terminate the Underlying Agreement and/or this Agreement.

16. **Effect of Termination.** Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors of Business Associate. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

17. **Amendment.** Covered Entity and Business Associate agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA or HITECH, as they may be amended, and any other applicable regulations in regard to such laws.

18. **Remedies In Event of Breach.** Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation. Furthermore, in the event of a Breach by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section III shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

19. **Interpretation.** Should there be any conflict between the language of this Agreement and any other Agreement entered into between the Covered Entity and Business Associate (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Covered Entity and Business Associate specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the latter written agreement shall control over this Agreement.

20. **Compliance With State Law.** The Business Associate acknowledges that by accepting the Protected Health Information from Covered Entity, it becomes a holder of medical records information under the Maryland Medical Records Law and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the Maryland Medical Records Law conflict regarding the degree of
protection provided for Protected Health Information, Business Associate shall comply with the more restrictive protection requirement.

21. **Survival.** The obligations of Business Associate of this Agreement shall survive any termination of the Underlying Agreement.

22. **Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

23. **Entire Agreement.** This Agreement constitutes the entire agreement between the Covered Entity and Business Associate. This Agreement supersedes all prior and contemporaneous business associate agreements or amendments.

24. **Ambiguity.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HITECH, HIPAA, and the Privacy and Security Rules and other implementing regulations and guidance.

25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

26. **Severability.** If any of the provisions of this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.
IN WITNESS WHEREOF, it is the intent of the parties that Provider has signed this Agreement under seal and further, that the parties have executed this Agreement the day and year first written above.

WITNESS: [AWARDED VENDOR’S COMPANY NAME]

By: __________________________(SEAL)
   Name: ________________________________
   Title: _________________________________

WITNESS: BALTIMORE COUNTY, MARYLAND, a body corporate and politic

By: ________________________________
   Stacy L. Rodgers
   County Administrative Officer
   Date

APPROVED FOR FORM AND LEGAL SUFFICIENCY*
(Subject to Execution by A Duly Authorized County Administrative Official and County Council, if Indicated)

OFFICE OF THE COUNTY ATTORNEY
*Approval of Form and Legal Sufficiency Does Not Convey Approval or Disapproval of Substantive Nature of Transaction. Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

REVIEWED AND RECOMMENDED:

_________________________________
Name: ________________________________
Title: _________________________________
EXHIBIT A

NOTIFICATION TO THE
BALTIMORE COUNTY DEPARTMENT OF HEALTH ABOUT A
BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Paragraph 5(iii) of the Business Associate Agreement between:

- The Baltimore County Department of Health (BCDH), and
- ____________________________________________________ (Business Associate).

Business Associate hereby notifies BCDH that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

____________________________________________________________________________________
____________________________________________________________________________________

Date of the breach: ______________ Date of discovery of the breach: _______________________

Does the breach involve 500 or more individuals? Yes/No  If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach:

____________________________________________________________________________________

Names of individuals affected by the breach:

____________________________________________________________________________________

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

____________________________________________________________________________________
____________________________________________________________________________________

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Contact information to ask questions or learn additional information:

Name: ______________________________________________________________________
Title: ______________________________________________________________________
Address: ____________________________________________________________________
Email Address: _________________________________________________________________
Phone Number: _________________________________________________________________
BALTIMORE COUNTY, MARYLAND
USE OF MINORITY BUSINESS ENTERPRISES AND WOMEN’S BUSINESS ENTERPRISES
IN
COUNTY CONTRACTS

MBE/WBE Plan Package
PROSPECTIVE BIDDERS/OFFERORS

Baltimore County Executive Order 2017-003 Use of Minority Business Enterprises and Women’s Business Enterprises states:

SECTION 6. BID REQUIREMENTS.
(A)(1) All bidders shall submit a list of all subcontractors contacted in preparation of their bid package or proposal.
(2) The list shall include the service to be performed, bid amount, and the race/ethnicity/gender of the business owner(s).
(B)(1) All bidders shall submit a list of all subcontractors to be used on a county contract in the bid package.
(2) This list shall include all subcontractors (both MBE/WBE and non MBE/WBE) used, the service to be performed, the total amount to be paid, and the race/ethnicity/gender of the owner.

If the solicitation includes a MBE/WBE subcontracting goal, you MUST demonstrate “Good Faith” effort either by:

1. Complete and sign FORM A, FORM B (to include FORM B-Prime if MBE/WBE Prime wishes to count towards the goal) and FORM C listing all subcontractors with the initial bid submission.
   a. All Forms must be completed and signed. However, FORM C MUST be completed and signed by both the prime and the MBE/WBE subcontractor.
   OR
2. If you are unable to meet any portion of the goal, you MUST do one of the following:
   a. If you are requesting a partial waiver, complete and sign FORM A with initial bid submission. FORM B (to include FORM B-Prime if MBE/WBE Prime wishes to count towards the goal) and FORM C (listing all subcontractors). In addition, complete, sign and submit FORM D and FORM E accompanied with all supporting documentation for the portion of the goal that will not be achieve as specified on FORM A.
   b. If you are requesting a full waiver, complete and sign FORM A indicating your intent to request a full waiver accompanied with a completed and signed FORM C listing all subcontractors, FORM D and FORM E accompanied with all supporting documentation. This MUST be submitted with the initial bid as specified on FORM A.
   c. All Forms must be completed and signed. FORM C and FORM D MUST be completed and properly signed by both the Prime AND the MBE/WBE subcontractor(s).

NOTE: The MBE/WBE subcontracting goal applies to ALL prime/general contractors including certified and non-certified minority and women owned firms. However, a Minority-owned or a Women-owned prime may self-perform up to 50% of MBE/WBE subcontracting goal set in the solicitation. The MBE/WBE primes that wish to count towards the goal must list themselves on all appropriate forms.
Executive Order: Minority business enterprises and women business enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in certain circumstances, in part with County funds. Accordingly, on July 27, 2017, the County Executive adopted the EXECUTIVE ORDER No. 2017-003 addressing MBE/WBE participation in County contracts. The July 27, 2017 Executive Order may be found on the Baltimore County website at www.baltimorecountymd.gov/go/mwbe.

Each Contract: The County shall establish a minimum MBE/WBE participation amount for each contract, as applicable.

Bidder/Offeror Responsibility: The bidder/offeror shall ensure that MBE/WBE participation occurs in accordance with the contract requirements and the County Executive’s Executive Order. All bidder/offereors shall ensure that MBE/WBE have the maximum opportunity to compete for and perform County contracts, as applicable. Baltimore County, Maryland, and/or its bidder/offerors and contractors shall not discriminate on the basis of race, color, national origin, disability or sex in the award and performance of any County contract.

APPROVED MBE/WBE LISTINGS

Published compilations of approved and certified MBE/WBE, contractors, subcontractors, material suppliers, etc. include:

1. DIRECTORY OF MINORITY BUSINESS ENTERPRISE (MDOT): http://mbe.mdot.state.md.us/directory/search_select.asp
2. MINORITY BUSINESS DIRECTORY OF THE CITY OF BALTIMORE: http://cityservices.baltimorecity.gov/mwboo/

BIDDER/OFFEROR’S ACTIONS

Seeking Firms: The bidder/offeror will seek commitments by subcontract or otherwise from MBE/WBE firms for supplies and/or services, any combined value of which equals or exceeds the required percentage of MBE/WBE participation goal for the County contract. However a MBE/WBE Prime that affirms its MBE/WBE status on the Minority and/or Women Prime Participation Affidavit may count up to 50% of the goal.

Expenditures for Materials and Supplies: A bidder/offeror may count toward its MBE/WBE contract requirements, all expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

Information to be supplied: All bidder/offerors shall submit the following information to the County at the time of bid submission:

1. The name of an employee designated as the bidder/offeror's liaison to the County's Minority Business Enterprise Unit.
2. The following forms shall be completed and submitted
   • Certified MBE/WBE Utilization and Fair Solicitation Affidavit (Form A); from among those names appearing in the Approved MBE/WBE Listings (excepting Federal Highway Administration projects, which exclusively require DBE approved and certified by the Maryland Department of Transportation Certification Committee);
   • A MBE/WBE Participation (Form B) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.
• A MBE/WBE Disclosure and Participation Statement (Form C) completed and signed by the prime contractor and MBE/WBE firms for each MBE/WBE listed on the Form. Form C must match what is stated on Form B.

• If applicable, MBE/WBE Subcontractor Unavailable Certificate (Form D) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.

3. If applicable, MBE/WBE Outreach Efforts - Compliance Statement (Form E) completed and signed by the Bidder/Offeror. The prime shall submit a list of all subcontractors.

4. For DPW contracts, if the bidder/offeror intends to fulfill the MBE/WBE requirements by use of a joint venture, he/she must submit a Joint Venture Disclosure Affidavit (Form D-EEO-006-A and B showing the extent of MBE/WBE participation. If a bidder/offeror intends to use a MBE/WBE joint venture as a subcontractor to meet its MBE/WBE requirements, the affidavit must be submitted through the bidder/offeror by the proposed subcontractors and signed by all parties.

5. If the bidder/offeror’s proposed MBE/WBE participation does not meet the MBE/WBE contract requirements, information sufficient to demonstrate that the bidder/offeror has made every effort to meet the requirements must be submitted. (See DETERMINATION OF BID RESPONSIVENESS hereafter)

RECORDS AND REPORTS

Returning Records: The bidder/offeror must keep such records as are necessary to determine compliance with its MBE/WBE utilization requirements:

1. The MBE/WBE and non-minority contractors, type of work being performed, actual values of work and services.

2. Documentation of all correspondence, contacts, telephone calls, etc., to obtain MBE/WBE services for the contract.

3. All prime contractors and MBE/WBE sub-contractors are required to report monthly to the County through an online system called PRISM. If the contractor cannot submit his/her report on time, he/she will notify the County MBE/WBE office and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of noncompliance. The County in its sole discretion and/or upon written request may require additional reports regarding MBE/WBE.

Retaining Records: All MBE/WBE records must be retained for 3 years following the expiration or any earlier termination of the contract and shall be available for inspection and photocopying by the County.

Investigation and Notification: Whenever the County believes the bidder/offeror, contractor, or any subcontractor may not be operating in compliance with the MBE/WBE requirements, the County may, in its sole discretion, conduct an investigation. If the County finds the bidder/offeror, contractor, or any subcontractor is not in compliance with the MBE/WBE requirements, the County may exercise any and all rights and remedies available to the County, under the contract, at law or equity, as deemed applicable and appropriate by the County in its sole discretion.

DETERMINATION OF BID RESPONSIVENESS

Request for Deviation: If the bidder/offeror is unable to procure from MBE/WBE firms (by subcontract or otherwise), supplies and services, any combined value of which equals the required percentage of the total value of the contract, the bidder/offeror may request, in writing, a deviation or waiver of the contract requirements. To obtain such a waiver, the bidder/offeror must submit the following information at the time bids are due:
The request for waiver request shall include (1) a signed unavailability statement (Form D) executed by all MBEs and WBEs that the bidder/offeror solicited for participation and (2) Outreach Efforts/Compliance Statement (Form E) that demonstrates the bidder/offeror’s good faith efforts to comply with the contract requirements, including copies of solicitation documentation to all potential subcontractors:

- Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder/offeror contacted each MBE/WBE;
- Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

**Bid Rejection:** The failure of any bidder/offeror (including the apparent low bidder/offeror) to provide a responsive MBE/WBE Plan as required by the solicitation may result in the bidder/offeror being deemed non-responsive and the County’s rejection of the bid.

**Liquidated Damages** If the County issues a notice of intent to award contract to the apparent low bidder/offeror who provided a responsive MBE/WBE Plan, but, if after said notice and before execution of Contract Documents, it is determined by the County that the apparent low bidder/offeror has failed to comply with the MBE/WBE Plan, such failure may result in the recommendation by the appropriate Procurement Official to annul the award and forfeit the bidder/offeror’s Proposal Guaranty to the County, not as a penalty, but as liquidated damages, it being acknowledged that actual damages will be difficult if not impossible to accurately measure. In addition, the County may proceed as it determines to be in its best interest, including but not limited to, the Notice of Award may be made to the next lowest responsive and responsible bidder/offeror or the work may be re-advertised.

**Contract Breach:** If, after execution of a County contract, the contractor becomes aware it may or will fail to fulfill the applicable MBE/WBE requirements and/or may or will deviate from the contractor’s bid response/contract terms, the contractor shall promptly advise the County of this in writing. Thereafter, the County will determine what action or remedy is appropriate on a case-by-case basis, in the County’s sole discretion.

**Approval Required for Changes:** Any and all changes to the MBE/WBE subcontractors or the type or amount of work to be performed by such subcontractors during the contract term must be mutually agreeable to the County and the contractor and shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor.

**Cooperation in Reviews:** The bidder/offeror will cooperate with the County in any reviews of the contractor’s procedures and practices with respect to MBE or WBE firms, which the County may from time to time conduct in its sole discretion.

**Other:** If the documents used to determine the contractor’s efforts, achievement of, and/or the status of an MBE/WBE requirement or fulfillment thereof contain false, misleading or misrepresented information, the contractor may be declared in breach of the contract and the County may take any and all actions and/or remedies available to the County under the contract, at law, or in equity. If an MBE/WBE is disqualified by any public entity, including but not limited to, Baltimore City, the State or MDOT, at any time after award or during the term of the contract, the County may, in its sole discretion, require the prime contractor to promptly submit for County approval, the contractor’s plans for fulfilling the required MBE/WBE participation under the contract, and/or request such detail and additional information as the County, in its discretion deems appropriate.
PRIME CONTRACTOR MINORITY AND WOMEN PARTICIPATION AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title]________________________________________ and the duly authorized representative of [business]_______________________________________ (the “Business”) and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

B. AFFIRMATION REGARDING MINORITY AND WOMEN PARTICIPATION

I FURTHER AFFIRM THAT:

I am aware that, pursuant to the July 27, 2017 Executive Order of Baltimore County, Maryland, the following words have the meanings indicated.

(A) “Minority Business Enterprise” or “MBE” means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(B) “Women’s Business Enterprise” or “WBE” means a business enterprise that is owned, operated and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

____ The Prime is a MBE or WBE

☐ Maryland State Department of Transportation (MDOT) #____________________

☐ City of Baltimore #____________________

☐ Name Other Jurisdiction: __________________________________  #____________________

☐ The ownership of the Noncertified MBE/WBE business consists of _____% minorities and _____% women (for a total of _____%), each of which has operational and managerial control, interest in capital and earnings commensurate with their percent ownership.

<table>
<thead>
<tr>
<th>% African American</th>
<th>% Hispanic American</th>
<th>% Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>_______ % Asian American</td>
<td>_______ % Native American</td>
<td>_______ % Disadvantaged (DBE)</td>
</tr>
</tbody>
</table>

____ The MBE/WBE prime anticipates meeting up to 50% of the stated participation goal with its own workforce. MBE/WBE primes percentage must be stated on the MBE/WBE PRIME PARTICIPATION SCHEDULE (FORM B) to count towards the goal.

____ The prime anticipates does not anticipate utilizing subcontractors for _____% of the work of the contract requirements, of which it anticipates ___% will be MBEs and ___% will be WBEs.

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

Date: ________________________ By:____________________  __________________________

(Authorized Representative and Affiant’s Name and Title)
BALTIMORE COUNTY, MARYLAND
Certified MBE/WBE Utilization and Fair Solicitation Affidavit
(FORM A)

*This document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

I acknowledge the goal for solicitation #_____ is a minimum of ______%. This goal must be met by any combination of the MBE/WBE subcontractors. However, for instances where the Prime is counting up to 50% of the goal, the remaining goal balance must be met by any combination of the MBE/WBE subcontractors.

- The goal breakdown is as follow::
  - _____% Minority/Women Prime
  - _____% for certified MBE-owned businesses and/or
  - _____% for certified WBE-owned businesses.

I have made a good-faith effort to achieve this MBE/WBE solicitation requirement. If awarded the contract, I will comply with this MBE/WBE contract requirement and will continue to use my best efforts to increase MBE/WBE participation during the contract term.

PLEASE CHECK ONE BOX (EITHER 1, 2, OR 3)

1  □ Prime has met the MBE/WBE contract requirements for this solicitation and contract. I submit the Subcontractor Participation Form B and Form C, along with this Affidavit, which details how the Prime will achieve the contract requirements. Submit a complete list of all additional subcontractors

   Or

2  □ After having made a good-faith effort to achieve the MBE/WBE requirements, the Prime can only achieve partial success. I submit the Subcontractor Participation Form B, Form C, Form D and Form E along with this Affidavit, which details how the Prime will partially achieve the contract requirements. Submit a complete list of all additional subcontractors

I request a partial waiver and will meet the following MBE/WBE participation goals:

- Partial waiver of MBE/WBE subcontract participation::
  - _____% Minority/Women Prime
  - _____% for certified MBE-owned businesses and/or
  - _____% for certified WBE-owned businesses.

   Or

3  □ After having made a good faith effort to achieve the MBE/WBE requirements for this contract, the Prime is unable to achieve the requirements and/or sub requirements for this contract. I submit the MBE/WBE Participation Form D and Form E, along with this Affidavit, which details the steps the Prime has taken in an attempt to achieve the contract requirements. Therefore, I request a full waiver.

IF YOU HAVE CHECKED BOX 2 OR 3, THE FOLLOWING IS APPLICABLE:

1) If a bidder is unable to comply with the goals established in a bid for a project, the bidder may submit a request for a waiver at the time of bid submission. However, occasions for granting waivers will be limited.
2) The request for waiver shall include documentation that demonstrates the bidder’s good faith efforts to comply with the goals, including:
   (I) Signed unavailability statements from all MBEs and WBEs that the bidder solicited for participation; and
   (II) Copies of solicitation documentation to include the scope of services to be performed by the subcontractors accompanied with the following:

   (a) Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each; and
   (b) Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.
   (c) Responses from MBE/WBE firms contacted to fulfill the goal.

As I have checked Box 2 or 3 of this Affidavit, I understand I must submit the following supporting documentation with the bid:

- Subcontractor Participation Schedule (Form B)
- Subcontractor Disclosure and Participation Statement (Form C)
- MBE/WBE Subcontractors Unavailable Certificate (Form D) (if applicable)
- MBE/WBE Outreach Efforts – Compliance Statement (Form E) (if applicable)

I acknowledge that the MBE/WBE subcontractors/suppliers listed on the Subcontractor Participation Schedule (Form B) will be used to accomplish the percentage of MBE/WBE participation that the Prime shall achieve. A fully executed Form C must match Form B.

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

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

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

| Name/Date: | ____________________________ |
| Title: | ____________________________ |
| Email: | ____________________________ |

### Bid/Proposal Name and Number

<table>
<thead>
<tr>
<th>Project Location</th>
</tr>
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</table>

### Base Bid

| $ ____________ |

### 1. Subcontractor Name and Tax ID

<table>
<thead>
<tr>
<th>Subcontractor Address</th>
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</table>

<table>
<thead>
<tr>
<th>Telephone Number</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Fax Number</th>
</tr>
</thead>
</table>

Select One:  
- MBE  
- WBE  
- SBE  
- N/A

Provide if Applicable:  
- MDOT  
- Baltimore City  
#___________________________

### NAICS Code(s), Work to be Performed and Dollar Amount

<table>
<thead>
<tr>
<th>Percent of Total Contract</th>
</tr>
</thead>
</table>

### Minority Status (If applicable):

- African American  
- Alaska Native  
- Asian American  
- Asian American Subcontinent  
- Disabled  
- Disadvantaged  
- Corporation  
- Female American Indian  
- Hispanic American  
- Native American  
- Other  
- Female  
- American Indian  
- Pacific  
- Small Business  
- Other

### 2. Subcontractor Name and Tax ID

<table>
<thead>
<tr>
<th>Subcontractor Address</th>
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<table>
<thead>
<tr>
<th>Telephone Number</th>
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<table>
<thead>
<tr>
<th>Fax Number</th>
</tr>
</thead>
</table>

Select One:  
- MBE  
- WBE  
- SBE  
- N/A

Provide if Applicable:  
- MDOT  
- Baltimore City  
#___________________________

### NAICS Code(s), Work to be Performed and Subcontract Dollar Amount

<table>
<thead>
<tr>
<th>Percent of Total Contract</th>
</tr>
</thead>
</table>

### Minority Status

- African American  
- Alaska Native  
- Asian American  
- Asian American Subcontinent  
- Disabled  
- Disadvantaged  
- Corporation  
- Female American Indian  
- Hispanic American  
- Native American  
- Other  
- Female  
- American Indian  
- Pacific  
- Small Business  
- Other

### 3. Subcontractor Name and Tax ID

<table>
<thead>
<tr>
<th>Subcontractor Address</th>
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<th>Telephone Number</th>
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</table>

<table>
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<tr>
<th>Fax Number</th>
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</table>

Select One:  
- MBE  
- WBE  
- SBE  
- N/A

Provide if Applicable:  
- MDOT  
- Baltimore City  
#___________________________

### NAICS Code(s), Work to be Performed and Subcontract Dollar Amount

<table>
<thead>
<tr>
<th>Percent of Total Contract</th>
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### Subcontractor Total Dollar Amount

<table>
<thead>
<tr>
<th>Total Subcontractor Percent of Entire Contract</th>
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### Form Prepared by:

- Name: ____________________________  
- Title: ____________________________  
- Email: ____________________________

<table>
<thead>
<tr>
<th>MBE or WBE Prime Participation</th>
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<tbody>
<tr>
<td>%</td>
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<table>
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<tr>
<th>Total MBE Subcontracting Participation</th>
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<td>%</td>
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<tr>
<th>Total WBE Subcontracting Participation</th>
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<td>%</td>
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<tr>
<th>Total MBE/WBE Participation</th>
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<td>%</td>
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<tr>
<th>Total SB/SBE Participation</th>
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<tbody>
<tr>
<td>%</td>
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</table>
PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE/WBE PRIME FIRM WILL PERFORM USING ITS OWN WORKFORCE PERTAINING TO THE PERCENTAGE STATED MBE/WBE PARTICIPATION SCHEDULE (FORM B) FOR PURPOSES OF MEETING THE MBE/WBE PARTICIPATION GOALS.

*This document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

Provided that _________________________________________________ (Prime Contractor’s Name) with Certification Number _____________ is awarded the County contract in conjunction with Solicitation No. ______________________, such MBE Prime Contractor intends to perform with its own forces at least $___________ which equals to___% of the Total Contract Amount for performing the following products/services for the Contract:

<table>
<thead>
<tr>
<th>NAICS CODE</th>
<th>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.</th>
<th>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</th>
<th>VALUE OF THE WORK</th>
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MBE PRIME CONTRACTOR

Signature of Representative:
__________________________________

Printed Name and Title:____________________
__________________________________

Firm’s Name:____________________

Federal Identification Number: __________

Address: ___________________________
__________________________________

Telephone: ___________________________

Date: ___________________________

Certified ☐ Yes ☐ No

Certifying Jurisdiction _________________________________

MBE PRIME CONTRACTOR

Minority Status:
☐ African American
☐ Hispanic American
☐ Women
☐ Asian American
☐ Native American
☐ Disadvantaged
BALTIMORE COUNTY, MARYLAND
SUBCONTRACTOR DISCLOSURE AND PARTICIPATION STATEMENT
(FORM C)

*This document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

NOTE: ANY INCONSISTENCY BETWEEN THIS FORM AND FORM B MBE/WBE PARTICIPATION MAY RENDER A BID/PROPOSAL NON-RESPONSIVE AND THE COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

Contract Name, Bid/Proposal Number: _____________________________________
________________________________________________________________________________

Name of Prime:  ______________________________________________

Name of MBE/WBE Subcontractor: _________________________________________
_______________________________________          ___________________________________

Print Representative Name, Title                                                   Best Contact Information

☐ MDOT  ☐ Baltimore City
☐ MBE  ☐ WBE  ☐ SBE  ☐ N/A

Certification Number

1. NAICS Code(s), Work/Services to be performed by MBE/WBE Subcontractor:       __________________________

2. Subcontract Amount: $ __________________________ or ________% of the County contract cost.

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

4. MBE/WBE Anticipated Commencement Date:   _______   Completion Date:   _______

5. This is a MBE-Owned Business Firm: Yes   _______   No   _______

6. This is a WBE-Owned Business Firm: Yes   _______   No   _______

********************************************************************************************

NOTE: If the Prime is notified that it will be awarded the above referenced contract, the undersigned MBE/WBE subcontractor and Prime must enter into a subcontract for the work/service indicated above upon the Prime’s execution of a contract for the above referenced project with the Baltimore County, and provide a copy of the fully executed MBE/WBE SUBCONTRACTOR PARTICIPATION NOTICE OF INTENT TO AWARD (FORM C-Subcontractor) accompanied with the anticipated Work Breakdown Schedule (providing the subcontractor’s mobilization timeframe) to mwbe@baltimorecountymd.gov within 10 calendar days of receipt by the Prime of FORM C-Subcontractor from the County. The undersigned subcontractor is a MDOT or Baltimore City certified MBE/WBE firm. The terms and conditions stated above are consistent with our agreements.

Signature of MBE/WBE Subcontractor: ________________________________ Date: _________________

MBE/WBE Subcontractor’s Printed Name and Title: ________________________________

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

Signature of Prime: ______________________________________  Date: _________________

Prime’s Printed Name and Title: ___________________________________________________________

------------------------------------------------------------------------------------------

Revised 10/25/2019
Baltimore County, Maryland
MBE/WBE – Unavailability Certificate
(Form D)

*If applicable, this document must be completed and submitted with Bid/Proposal to Baltimore County.

**Note:** If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

1. It is hereby certified that the firm of ________________________________
   (Name of Minority firm)
   located at ________________________________
   (Number) (Street)
   ________________________________
   (City) (State) (Zip)
   was offered an opportunity to bid on the ________________________________ contract.

2. The ________________________________ (MBE/WBE Firm), is either unavailable for the work/service or unable to prepare a bid for this project for the following reason(s):
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

   Signature of Minority Firms MBE/WBE __________________________
   Representative Title __________________________ Date __________

   MDOT/Baltimore City Certification # __________________________
   Telephone # __________________________

3. PRIME’S SIGNATURE AND CERTIFICATION

I certify under oath that I contacted the Certified MBE/WBE and they advised me that they are unavailable, unable to perform the work/services for the above-contract or failed to respond to repeated requests for a price proposal for the above-contract.

__________________________ __________________________ Date ________
Signature of Prime Title Date
*This document must be completed and submitted with Bid/Proposal to Baltimore County.*

**NOTE:** If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

In conjunction with the bid or offer submitted in response to Solicitation Number ______________, I state the following:

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

2. Attached to this form are copies of the solicitation documentation in accordance with Section 6 (E) Bid Requirements of the Executive Order, used to solicit certified MBE/WBEs for the subcontract opportunities accompanied with the signed MBE/WBE Subcontractor Unavailability Certificate (Form D).

3. Bidder/Offeror made the following attempts to solicit MBE/WBEs:

______________________________
Signature – Bidder Offeror

______________________________
Print or Type Name of Firm

______________________________
Street Address

______________________________
City   State   Zip Code

______________________________
Date
To: Contractors/Consultants

From: Minority and Women Business Enterprise Office

Date: January 17, 2020

Subject: Compliance Reporting - Penalties

Baltimore County, Maryland (the "County") requires all Prime Contractors and all Subcontractors to submit monthly reports through an online MBE/WBE Compliance Portal (PRISM). The Portal can be found under Compliance Reporting for Primes and Subcontractors at www.baltimorecountymd.gov/go/mwbe.

The County has found that a number of companies are failing to file reports in a timely manner, which makes it difficult for the County to verify compliance. As a result, the County has determined to assess penalties for non-compliance, effective September 1, 2018, as follows:

(a) For failure to file timely monthly reports:
   a. Assessment of a late fee of $10 per day per task, up to a maximum of $1,500 per task; and/or
   b. For multiple violations, termination of the contract for convenience or for default, with the contractor suspended from participating in County contracts for five (5) years.

(b) For failure to meet MBE/WBE requirements:
   a. Assessment of a penalty of up to 10% of the contract value; and/or
   b. Termination of the contract for convenience, with the contractor suspended from participating in County contracts for five (5) years together with assessment of a penalty of up to 10% of the contract value; and/or
   c. Termination of the contract for default together with assessment of a penalty of 10% of the contract value.

Each action and/or remedy described above is at the sole discretion of the County, and is in addition to any damages which the County may be entitled to under the contract.

This short video can be used as guidance on submitting the Prime to Subcontractor Payment Reporting:
http://stage.prismcompliance.com/etc/movies/vendor_contractpayment_tutorial.htm
If after contract expiration, it has been determined the MBE/WBE firms named were not used or were under used, by the contractor and supporting documentation was not provided and approved by the County the contractor may be assessed a penalty of up to 10% of the contract value and/or suspended from participating in County contracts for 5 years.

Questions regarding this correspondence and/or the use of this system can be directed to the MBE Office at mwbe@baltimorecountymd.gov or call (410) 887-3407.

Cc: File