

PROCUREMENT POLICIES & PROCEDURES

BCCC

Baltimore City Community College

Approved by BCCC's Board of Trustees on December 21, 2021

Approved by the Joint Committee on Administrative, Executive,
and Legislative Review of the Maryland General Assembly on
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SECTION 1. GENERAL INFORMATION

1.1 Authority and Delegation

1.1.1 The Board of Trustees of Baltimore City Community College approved on December 21, 2021, these procurement policies and procedures for the governance of procurements by Baltimore City Community College of Maryland consistent with the mandate of Chapter 732 of the Laws of Maryland 2021 (Senate Bill 326). Furthermore, the Board of Trustees has delegated to the President of the College the authority to implement and/ or to delegate implementation, as appropriate, of these policies and procedures.

1.1.2 The President or Designee shall establish specific internal procurement requirements and practices, in compliance with these policies and procedures, to ensure efficient and appropriate implementation of procurement actions. In addition, the President or Designee shall identify the Procurement Officer for various types of procurements by the College.

1.1.3 Pursuant to Chapter 732 of the Laws of Maryland 2021, Higher Education-Baltimore City Community College - Authority and effective July 1, 2021, "except as otherwise provided in this subsection [11-203(e) (2) of the State Finance and Procurement Article] this Division II [of the State Finance and Procurement Article] does not apply to Baltimore City Community College."

1.1.4 Approval of Award Actions

In addition to the authority and delegations provided for herein, the following notifications and approvals apply:

1.1.4.1 Board of Public Works approval is required for capital construction and service procurements exceeding \$500,000.00

1.1.4.2 Notification must be given in writing to the Board of Trustees for any procurements between \$25,000 and \$99,999.

1.1.4.3 Prior notification must be given in writing to the President or Designee for sole source personal service contracts exceeding \$25,000.

1.1.5 Board of Trustees

1.1.5.1 Any contract with a value exceeding \$100,000 and any modifications to a contract that increase the value of the contract to a value exceeding \$100,000 shall be submitted to the Board of Trustees for review and approval.

1.1.5.2 Any procurement, regardless of dollar amount, that uses State general obligation bond proceeds authorized by the General Assembly, must be submitted to the Board of Trustees for approval prior to being submitted to the Board of Public Works for approval.

1.1.6 Board of Public Works

1.1.6.1 Any contract for capital improvements or services with a value exceeding \$500,000 and any modifications to contracts for capital improvements or services where the modification increases the value of the contract to a value exceeding \$500,000 shall be submitted to the Board of Public Works for review and approval.

1.1.6.2 Any procurement, regardless of dollar amount, that uses State general obligation bond proceeds authorized by the General Assembly, must be submitted to the Board of Public Works for approval prior to execution of the contract. See Md. State Finance & Proc. Code Ann., § 8-301.

1.1.6.3 Contracts, including modifications, which are subject to approval by the Board of Public Works, are subject to applicable Board of Public Works rules and advisories.

1.2 Purpose

1.2.1 These Procurement Policies and Procedures are designed to support and facilitate the educational, research, and public service missions of Baltimore City Community College through the acquisition of goods and services by applying best methods and business practices that provide for public confidence in the College.

1.2.2 This document employs policies that are relevant to the College environment while providing for a procurement process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the procurement process, and uniform procurement procedures. These values promote the purposes of State procurement law and strike a balance between needed self-management and the Board of Trustees' responsibility to govern the College.

1.3 Applicability

1.3.1 General Applicability

- 1.3.1.1 These Procurement Policies and Procedures apply to contracts by Baltimore City Community College for the acquisition, rental, purchase or lease of Commodities, Supplies, Services, Maintenance, Capital Improvements, Information Technology services, and Architectural and Engineering services.
- 1.3.1.2 A procurement contract executed before the effective date of these Policies or Procedures shall be governed by those laws, policies, and procedures in effect at the time of the contract execution unless the procurement contract expressly acknowledged by its terms that it would be subject to these Procurement Policies and Procedures, upon their approval and adoption.
- 1.3.1.3 Subcontracts and sub-recipients' contracts and other agreements entered into by the College in fulfilling its obligations under federal, state, local and private grants and contracts where the subcontractor or sub-recipient is specifically identified in the grant agreement or primary contract are not procurement actions and are therefore not subject to these Policies and Procedures.
- 1.3.1.4 The Board of Trustees may, from time to time, amend these policies and procedures in order that they remain consistent with the law and current best methods and business practices. Material changes shall be submitted to the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the Maryland General Assembly for approval.

1.3.2 Exclusions

These policies and procedures do not apply to the following procurements. The President or Designee will have sole discretion in interpreting the applicability of any procurement relative to these exclusions.

- 1.3.2.1 Collective bargaining agreements with employee organizations (labor contracts).
- 1.3.2.2 The lease, sale, purchase, transfer, disposal, or any other action involving an interest in Real Property.
- 1.3.2.3 The sale, transfer, and/ or disposal of surplus personal property.
- 1.3.2.4 Collaborative undertakings that support the missions of the College.

- 1.3.2.5 Reimbursement contracts for which user eligibility and cost is set by law or by rules and regulations (e.g. Medicaid).
- 1.3.2.6 Intergovernmental contracts or like-business agreements.
- 1.3.2.7 Purchases in support of enterprise activities for purposes of direct resale or remanufacture and subsequent resale.
- 1.3.2.8 Agreements creating contractual employee relationships.
- 1.3.2.9 Cultural, entertainment, and exhibitions or displays on college property, and intercollegiate athletic procurement contracts.
- 1.3.2.10 Protection and administrative intellectual property rights.
- 1.3.2.11 Surveying and evaluating architecturally, archeologically, historically, or culturally significant properties, and other than as to architectural services, preparing historic preservation planning documents and educational material.
- 1.3.2.12 Housing, food, and related supply or service contracts for conference facilities, and/ or activities.
- 1.3.2.13 Revenue-generating contracts such as pouring rights and the campus bookstore, that support the on-going operations of the College and its activities.
- 1.3.2.14 Contracts of the College for programs and operations located or implemented outside of the United States of America.
- 1.3.2.15 Any procurement or contracts to the extent of any conflict with a governing federal law, regulation, assistance instrument, or other requirement; or the terms of a gift.
- 1.3.2.16 Contracts for the purchase, use, or development of curricular materials.
- 1.3.2.17 Membership fees, dues, subscription as it relates to employee development and certification.
- 1.3.2.18 Honoraria and Stipends (which mean a one-time payment to an individual who is not College employee) for services to the College.

1.4 Unlawful Actions / Ethical and Professional Conduct

1.4.1 State procurement professionals must comply with the Maryland Public Ethics Law, Maryland Code Annotated, General Provisions, Title 5. Violation of the Public Ethics Law may result in disciplinary action up to and including termination from State employment. For more information on the Public Ethics Law, please see the following links:

1.4.1.1 <http://ethics.maryland.gov/wp-content/uploads/filebase/state-employees/General-InformationEthics-Law.pdf>.

1.4.1.2 <http://ethics.maryland.gov/employeeofficials/>

1.4.2 A few examples of prohibited conduct are:

1.4.2.1 An official or employee may not intentionally use the prestige of his office for personal gain or that of another.

1.4.2.2 An official or employee may not participate in an official action, decision or matter in circumstances where the official or employee has an interest or where certain relatives of the official or employee have an interest.

1.4.2.3 An official or employee may not hold any employment relationship that would impair his impartiality or independence of judgment.

1.4.2.4 An official or employee may not disclose or use for personal economic benefit, or that of another, confidential information acquired by reason of his public position.

1.4.2.5 A former official or employee may not assist or represent anyone other than the State for compensation in a case, contract or other specific matter involving the State, if that matter is one in which he significantly participated as an official or employee.

1.4.2.6 Employees may not solicit gifts for themselves or others, and generally may not accept gifts from lobbyists or those regulated by or doing (or seeking to do) business with the employee's agency.

1.4.2.7 Maryland law also includes procurement-specific statutes under State Finance and Procurement Article (SFP) Title 13 governing unlawful conduct and promises; conflict of interests; and participation in procurement. Procurement professionals and vendors seeking to do business with the State should be aware of the following provisions:

- A. Pursuant to SFP §13-211, during a procurement, a competing contractor may not:
 - 1) Offer, or even discuss, future employment or business opportunity with any procurement official of the agency conducting the procurement;
 - 2) Offer or give or promise to offer or give any money, gratuity, or other thing of value to any procurement official of the agency conducting the procurement; or
 - 3) Solicit or obtain from any officer or employee of an agency conducting the procurement, before the award of a contract, any proprietary or source selection information regarding the procurement.

- B. Pursuant to SFP §13-212, if a solicitation involves selecting a contractor who will assist in the formation, award, or execution of any State contract, the solicitation document must require that a bidder or offeror provide an affidavit that discloses any actual or potential conflict of interests.

- C. Pursuant to SFP §13-212.1, with some exceptions, individuals (or their employers) who assist in drafting a solicitation or selecting an awardee may not:
 - 1) Submit a response to that solicitation; or
 - 2) Assist or represent another person who is submitting a response to that solicitation.
 - 3) The above identified laws should be strictly adhered to during each and every phase of a procurement, vendor meetings, vendor demos, market studies, etc.

SECTION 2. ADVERTISING AND COMPETITION REQUIREMENTS

2.1 Advertising Requirements

2.1.1 Advertising Thresholds:

2.1.1.1 The following advertising requirements apply to all procurements.

- A. Up to \$24,999 -no formal advertising required.
- B. Between \$25,000 to \$49,999 above –advertised at least 3 days.
- C. \$50,000 and above – advertised at least 20 days.

2.1.1.2 In addition to the above, the Procurement Officer is responsible to ensure that a solicitation provides reasonable time for prospective offerors to prepare and respond to the solicitation.

2.1.2 Advertising Methods:

To the extent practicable, solicitations shall be published in a manner that best meet the needs of the solicitation. Examples of resources available to the Procurement Officer for publishing a solicitation include but are not limited to:

- 2.1.2.1 eMaryland Marketplace Advantage (required)
- 2.1.2.2 College Bid Board
- 2.1.2.3 Trade Journals
- 2.1.2.4 Business Journals
- 2.1.2.5 Other publications as determined by the Procurement Officer

2.1.3 Solicitation Pre-Advertising:

Contracts with an estimated value greater than \$500,000 may be pre-advertised at least 20 days in advance of the solicitation for bids or proposals. The pre-advertisement will give a brief description of the project, the estimated price range, a description of the procurement method, and an estimated date that the actual solicitation for bids or proposals is planned to be issued.

2.2 Full and Open Competition

2.2.1 The Procurement Officer shall ensure full and open competition for all

contract actions with a total value, including options, exceeding \$50,000 through the use of competitive procedures described elsewhere in these Policies and Procedures. Delivery orders being issued under indefinite delivery contracts awarded by the College are exempt from this requirement. The competitive procedures available to ensure full and open competition are defined in Section 3 below.

2.2.2 Solicitations shall be provided to a reasonable number of potential proposers known to the College and those requesting a copy of the solicitation in order to assure adequate competition.

2.3 Other than Full and Open Competition

The Procurement Officer shall take reasonable steps to avoid entering contracts without full and open competition, except in circumstances where it is both necessary and in the best interests of the College. Further, the Procurement Officer shall take reasonable action to avoid the need to renew construction, commodities, supplies and/or services contracts without full and open competition. The Procurement Officer shall ensure that each contract that is entered into without full and open competition contains all the required clauses, representations, terms, conditions, and certifications, as required by these Procurement Policies and Procedures. The Procurement Officer shall negotiate the most favorable price and conditions notwithstanding the nature of the procurement.

The following circumstances may permit the use of other than full and open competition:

2.3.1 Contracts whose total value, including options, is less than \$50,000:

2.3.1.1 For procurements less than \$5,000 competition is preferred but not required.

2.3.1.2 Procurements between \$5,000 and \$24,999 shall have at least two written bids/proposals.

2.3.1.3 Procurements between \$25,000 and \$49,999 shall be advertised for at least three (3) days on the College's official bid board.

2.3.2 When the Procurement Officer determines that there is only one available source that will satisfy the College's requirements and/or circumstances present, the Procurement Officer will designate the contract as "sole source. In the event that a sole source product or material may be required in multiple procurements, then the sole source justification may be approved on a class action basis. Class action approvals will be for a time period of

no longer than 3 years.

2.3.3 With the prior approval of the Office of the Attorney General, the College may enter into agreements for services in connection with threatened or pending litigation, appraisals of real property for acquisition by the College, or collective bargaining as permitted by State Finance and Procurement Article § 13-107(b). These contracts do not require full and open competition and may be entered as sole source contracts.

2.3.4 Conditions Involving Unusual and Compelling Urgency or Emergency

When the College's need for the commodities or services is of an unusual and compelling urgency, as provided herein, the Procurement Officer is permitted to limit the number of sources from which he/she solicits bids or proposals and negotiate on a sole source or limited competition basis. Full and open competition need not be provided. This authority applies in those situations where-

2.3.4.1 An emergency condition exists that prevents the use of formal competitive procurement methods in awarding or modifying a contract that is essential to the College; and

2.3.4.2 The emergency condition threatens (1) serious injury to health or safety of person(s) or animal(s), (2) serious harm to the preservation or protection of property; or (3) serious harm to the continuance of necessary College functions.

2.3.4.3 Contracts awarded using this authority shall be supported by the written justifications and approvals described in Section 2.4 below. These justifications may be made after the contract award when preparation and approval prior to award would unreasonably delay the procurement.

2.3.4.4 The Procurement Officer is not required to publicize the solicitation of a procurement made on an emergency basis. This authority requires that the Procurement Officer request offers or proposals from as many potential sources as is practicable under the circumstances.

2.3.4.5 The emergency procurement shall be limited to the procurement of only the types of items and quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

2.3.5 Authorized or required by Federal or State of Maryland law.

When a particular procurement is subject to a federal or State of Maryland law and that law requires or prohibits the use of a specific source, other than full and open competition is permitted. The Procurement Officer shall document in the contract award documents the specific law being applied that limits the competition.

2.4 Justifications and Approvals for Other than Full and Open Competition

2.4.1 For procurements under \$25,000 the approval of the contract itself constitutes approval to utilize Other than Full and Open Competition methods. Justification and approval requirements stipulated below do not apply.

2.4.2 The Procurement Officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the Procurement Officer:

2.4.2.1 Justifies the use of such actions in writing;

2.4.2.2 Certifies the accuracy and completeness of the justification; and

2.4.2.3 Obtains the approval required by Section 2.4.7 below.

2.4.3 Faculty and staff employees, who generate the requirements for the goods and services being procured, are required to provide and certify as accurate and complete necessary data to support their recommendation for other than full and open competition. Faculty and staff shall forward such written justifications to the Procurement Officer.

2.4.4 Justifications may be made on an individual or class basis. Whenever a justification is made and approved on a class basis, the Procurement Officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

2.4.5 The justifications for a contract awarded under the authority of *Unusual and Compelling Urgency or Emergency* may be prepared and approved within a reasonable time after the contract award when preparation and approval prior to award would unreasonably delay the procurement.

- 2.4.5.1 *Unusual and Compelling Urgency/ Emergency* procurements require prior approval upon declaration of such an event. Only the President or Designee may declare and approve an emergency procurement.
- 2.4.6 Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited, including the following information, as appropriate under the circumstances:
 - 2.4.6.1 Nature and/or description of the action being approved (i.e., sole source, emergency procurement, etc.)
 - 2.4.6.2 A description of the commodities, construction, supplies or services required to meet the College's needs (including the estimated value).
 - 2.4.6.3 A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable under the circumstances, including whether a notice was or will be publicized as required by Section 2.1 above, and, if not, why.
 - 2.4.6.4 Any other material facts supporting the use of other than full and open competition,
 - 2.4.6.5 When *Unusual and Compelling Urgency or Emergency* is cited as justification, the justification shall include the date the emergency first became known, data, estimated cost, or other rationale as to the extent and nature of the harm to the College.
 - 2.4.6.6 A listing of the potential vendors or contractors, if any, that expressed, in writing, an interest in the procurement.
 - 2.4.6.7 A certification that the justification is accurate and complete to the best of the Procurement Officer's knowledge and belief.
- 2.4.7 Contracts involving other than full and open competition shall be approved in writing:
 - 2.4.7.1 For a proposed contract over \$25,000 the President or Designee shall approve the contract.
 - 2.4.7.2 The approval level for a class justification for other than full and open competition shall be determined by the estimated total value of the class.
 - 2.4.7.3 The estimated dollar value of all options shall be included in determining the value of the proposed contract.

SECTION 3. ELECTRONIC PROCUREMENTS AUTHORIZATION

3.1 Authority and Delegation

3.1.1 Unless prohibited by law, the College may conduct procurements by electronic means as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

3.1.2 Procurement transactions conducted by electronic means may include:

- 3.1.2.1 Solicitations;
- 3.1.2.2 Bids or proposals;
- 3.1.2.3 Awards
- 3.1.2.4 Execution
- 3.1.2.5 Contract Administration
- 3.1.2.6 Modifications and/ or Renewal Options
- 3.1.2.7 Protests; and
- 3.1.2.8 Claims

3.2 Requirements

3.2.1 The College shall conduct electronic procurements for the purposes of soliciting, evaluating, negotiating, awarding, modifying, and / or managing a contract through electronic means. A solicitation or a contract shall specifically identify:

- 3.2.1.1 Transactions for which electronic means are authorized;
- 3.2.1.2 Specific means of conducting each authorized electronic transaction, including:
 - A. Facsimile.
 - B. Electronic mail;
 - C. Specific electronic bidding platforms;
 - D. Internet;
 - E. Electronic funds transfer;
 - F. Electronic data interchange; and
 - G. Any other electrical, digital, magnetic, wireless, optical, or electromagnetic means of electronically conducting transactions;
- 3.2.1.3 The format for electronic transmission of required information;
- 3.2.1.4 The information processing systems to be used to conduct the electronic procurement transactions and how to access such systems;

- 3.2.1.5 The time, place, and manner of receipt of electronic transactions from a bidder, offeror, or contractor; and
- 3.2.1.6 The fees to be charged, if any, for use of the specified electronic means.

3.3 Unauthorized Transactions Prohibited.

- 3.3.1 An attempt by a bidder, offeror, or contractor to conduct an electronic procurement transaction may not be considered by the procurement officer unless the solicitation or contract specifically authorizes the electronic means for the specified transaction.
- 3.3.2 An attempt by a bidder, offeror, or contractor to conduct a transaction by electronic means, including any acknowledgement, bid, proposal, protest, or claim, does not satisfy the requirements of these Procurement Policies and Procedures unless the solicitation or contract specifically authorizes the use of electronic means for the specified transaction.

SECTION 4. PROCUREMENT METHODS

Set forth below are the generally accepted methods of procurement, which may be adjusted from time to time in the best interest of Baltimore City Community College to reflect current business practices.

4.1 Simplified Procurement Procedures

4.1.1 Simplified Procurement Limit

The Simplified Procurement limit is \$25,000. Procurement requirements shall not be artificially divided to constitute simplified procurements.

4.1.2 Procurements Using a Corporate Purchasing Card

For purchases not to exceed \$5,000 per transaction, the preferred method of purchase is using the corporate purchasing card, where accepted by a vendor, and in accordance with the policies and procedures set forth by the College and the State of Maryland.

4.1.3 Non-competitive Small Procurement Orders

Where the simplified procurement order does not exceed \$5,000 competition is preferred, but is not required.

4.1.4 Competitive Simplified Procurements

4.1.4.1 Advertisement and competition requirements provided in Section 2 shall apply to simplified procurements equal to or in excess of \$25,000.

4.1.4.2 Simplified procurements can be accomplished using any approved procurement type as described within Section 4.

4.1.4.3 Solicitations for simplified procurements shall include mandatory requirements as provided in Appendix A of these Procurement Policies.

4.1.5 Records

Adequate records shall be kept for simplified procurements and may include the following:

- 4.1.5.1 Name of authorized purchaser;
- 4.1.5.2 Date of purchase;
- 4.1.5.3 Name of vendor and vendor's social security number or federal employer identification number (FEIN);
- 4.1.5.4 If applicable, charge slip or telephone purchasing card log;
- 4.1.5.5 Itemized receipt, packing slip, or itemized repair order, if applicable
- 4.1.5.6 Copy of written or published solicitation, if used;
- 4.1.5.7 Solicitation documentation including names of vendors, copies of any written responses received, bid or offer amounts, basis for the award, identification of MBE/SBE vendors, or copy of sole source justification or explanation for single bid response;
- 4.1.5.8 Approved by Controller or designee for fund availability to satisfy the contractual requirement;
- 4.1.5.9 Copy of purchase order or contract.

4.1.6 Modifications

Modifications to a simplified procurement shall be approved by the Director of Procurement. However, any modifications that accumulate over the dollar threshold of a simplified procurement threshold, shall obtain prior approval in writing by the President or Designee.

4.1.7 Required Solicitation and Contract Clauses

In addition to those terms, conditions and specifications necessary to the particular procurement, simplified acquisitions shall include terms and conditions in accordance with Appendix A of these Procurement Policies and Procedures.

4.2 Competitive Sealed Bidding

4.2.1 Use of Competitive Sealed Bids

Competitive Sealed bidding, also called "Invitation for Bid", is a method of procurement which results in a contract awarded to the lowest evaluated responsive bid from a responsible bidder based on the specifications set forth in the solicitation. Typical reasons why Competitive Sealed Bids may be used include:

- 4.2.1.1 The award will be made based on price and other price-related factors.
- 4.2.1.2 It is not necessary to conduct negotiations with the responding sources about contract specifications or their bids.

4.2.1.3 Time permits the solicitation, submission, and evaluation of sealed bids.

4.2.1.4 There is a reasonable expectation of receiving more than one sealed bid.

4.2.2 Required Solicitation and Contract Clauses

4.2.2.1 In addition to those terms, conditions, and specifications necessary to a particular procurement, written solicitations, purchase orders, and written contracts resulting from competitive sealed bidding must include terms and conditions in accordance with Appendix A of these Procurement Policies and Procedures.

4.2.2.2 The solicitation shall state the date, time, and method for submission of bids. The Procurement Officer will establish a reasonable time, but no less than the minimum time period provided in Section 2 of these Procurement Policies and Procedures, for prospective bidders to prepare and submit their bids.

4.2.3 Pre-Bid Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-bid conferences is not mandatory.

4.2.4 Amendments or Addenda

If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential bidders that are known to have received a copy of the solicitation. All amendments shall include a statement to the effect that bidders are required to acknowledge receipt of any amendments to the request for bids. If appropriate, the due date shall be adjusted to ensure that sufficient time is given to prospective bidders to consider the information contained in the amendment for preparation of their responses.

4.2.5 Bid Opening

4.2.5.1 Once received, all bids and modifications to bids shall be placed in a secure place until the date and time for the bid opening. After the receipt of bids and before the bid opening, the College shall not disclose the identity of any bidder.

4.2.5.2 Bids are to be opened publicly via electronic bid board. The name, bid

price and other relevant information shall be read aloud or otherwise made available to those in attendance at the bid opening.

4.2.5.3 All bids received must be recorded, tabulated, or summarized.

4.2.6 Late Bids, Late Withdrawals, and Late Modifications

4.2.6.1 Any bid, request for withdrawal, or modification of a bid that is not received at the designated location, time, and date set forth in the bid documents will be considered late and will not be considered. Delivery of the bid to the specified location at the prescribed time and date is the sole responsibility of the bidder.

4.2.6.2 At the sole discretion of the Procurement Officer, exceptions may be made only when the reason for the late bid, late request for withdrawal or late modification of a bid, is due to the action or inaction of the College's personnel directing the procurement activity or their employees.

4.2.6.3 A record of the late bid, request for withdrawal, or modification of a bid, shall be made in the appropriate procurement file.

4.2.7 Form of Bids

A bid form shall be provided on which the bidder shall state the price, sign and submit along with all necessary submission. Bids may be submitted electronically or mailed in as indicated on the solicitation by the specified due date and time.

4.2.8 Bid Requirements

4.2.8.1 Bids shall be based upon the specifications contained in the solicitation.

4.2.8.2 Unless provided for in the solicitation documents that electronic forms of bid transmission are acceptable, each bid shall be typewritten or written legibly in ink.

4.2.8.3 If in writing, all erasures or alterations shall be initialed in ink by the person who signs the bid.

4.2.8.4 The bid shall be submitted in an envelope which clearly indicates that it contains a bid.

4.2.8.5 If specifically permitted by the invitation for bids, electronic records and signatures satisfy the requirement for written bids and signatures,

as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

- 4.2.8.6 Oral Bids. Oral bids may be accepted only if oral bids are solicited. All oral bids shall be followed immediately by a written confirmation detailing the information required in the solicitation.
- 4.2.8.7 Unless otherwise indicated in the bid documents, each bid shall be submitted in an envelope that clearly indicates that it contains a bid and identifies the bid by the bid number.

4.2.9 Mistakes, Errors, and Withdrawals of Bids

- 4.2.9.1 Technicalities or minor irregularities in bids may be waived if the Procurement Officer determines that it shall be in the College's best interest. The Procurement Officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid or waive the deficiency if it is to the College's advantage to do so.
- 4.2.9.2 A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 4.2.6 above.
- 4.2.9.3 If the Procurement Officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon the written approval of the Procurement Officer if any of the following conditions are met:
 - A. If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
 - B. A bidder may be permitted to withdraw a low bid if:
 - 1) A mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - 2) The bidder submits proof of evidential value that clearly and convincingly demonstrates a mistake was made.

- 4.2.9.4 Mistakes may not be corrected after award of the contract except when the Procurement Officer makes a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted. Corrections shall be submitted to and approved in writing by the Procurement Officer.
- 4.2.9.5 When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Officer shall prepare a determination showing that the relief was granted or denied in accordance with these policies and procedures.

4.2.10 Bid Evaluation and Award

- 4.2.10.1 Unless otherwise specified in the solicitation documents, bids shall remain irrevocable for a period of 90 days after the bid opening. If the Procurement Officer determines that this is not sufficient time to make an award, the time may be extended upon written request to the bidders. The Procurement Officer shall request of each bidder, that his bid shall continue to be irrevocable for the specified period of time.
- 4.2.10.2 An award will be made to the bidder offering the most favorable price that has been determined to be both responsible and responsive in meeting the requirements set forth in the solicitation. The College may make multiple awards if it is deemed to be in the best interest of the College, and if provided for in the solicitation. Bids may not be evaluated on criteria other than those set forth in the solicitation documents.
- 4.2.10.3 The College reserves the right to make an award as a total, item by item or by groups of items as determined to be in the best interest of the College.
- 4.2.10.4 If a single bid is received in response to a solicitation and the Procurement Officer determines that the bid is responsive and from a responsible bidder and other bidders had a reasonable opportunity to respond, a negotiated award may be made if it is determined by the Procurement Officer to be in the best interest of the College.
- 4.2.10.5 Unless it is specifically stated in the solicitation that multiple or alternate bids will be accepted, they may not be accepted. If they are to be accepted, the solicitation should set forth how such bids are to be treated.

4.2.10.6 Bids conditioned upon the award of another contract are not acceptable.

4.2.10.7 Alternates: If additive and/or deduct alternates are solicited in the solicitation, the College reserves the right to select alternates regardless of the order in which they are listed.

4.2.11 Tie Bids

4.2.11.1 Tie bids are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set forth in the invitation to bid.

4.2.11.2 The award shall be made to the in-state business if identical favorable bids are received from in-state and out-of-state bidders. However, in order for Baltimore City Community College to achieve its overall minority participation goal, a contract may be awarded as follows:

A. If identical favorable bids are received from an in-state certified minority business enterprise and an in-state non-minority business enterprise, or an out-of-state non-minority business enterprise, the award may be made to the certified minority business enterprise.

B. If identical favorable bids are received from in state and out-of-state certified minority business enterprises, the award may be made to the certified minority business enterprise having the greatest amount of certified minority business enterprise participation in the particular contract.

C. If identical favorable bids are received from in-state and out-of-state non-minority business enterprises, the award may be made to the non-minority business enterprise having the greatest amount of minority participation in the contract, including staff or certified minority business enterprise subcontract participation in the contract.

D. If identical favorable bids are received from in-state bidders or from out-of-state bidders and no rules for implementing a procedure for solving a tie bid apply, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

4.2.11.3 Records shall be made of all invitations for bids on which tie bids are received.

4.2.12 Cancellation of invitations after opening

- 4.2.12.1 Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.
- 4.2.12.2 Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.
- 4.2.12.3 As a general rule, after the opening of bids, an invitation should not be cancelled and re-solicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition.
- 4.2.12.4 The Procurement Officer may reject all bids and cancel the invitation before award but after bid opening, and proceed with a new solicitation, when the Procurement Officer determines, in writing, that:
 - A. Inadequate or ambiguous specifications were cited in the invitation.
 - B. Specifications have been revised.
 - C. The supplies or services being procured are no longer required.
 - D. The invitation did not provide for consideration of all factors of cost to the College.
 - E. Bids received indicate that the needs of the College can be satisfied by a less expensive article differing from that for which the bids were invited; or
 - F. For other reasons when cancellation is clearly in the best interest of the State of Maryland or the College.
- 4.2.12.5 The Procurement Officer, with approval of the President or Designee, may reject all bids and, without issuing a new solicitation, convert the solicitation to a Negotiated Competitive Sealed Bid as provided

for in Section 4.2.15 of these Procurement Policies and Procedures, when:

- A. All otherwise acceptable bids received are at unreasonable prices, or only one bid is received, and the Procurement Officer cannot determine the reasonableness of the bid price;
- B. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- C. No responsive bid has been received from a responsible bidder.

4.2.12.6 Should administrative difficulties be encountered after bid opening that may delay award beyond the time period established in the solicitation for which bids are irrevocable, bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) may be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need to re-solicit the procurement.

4.2.13 Records

When bids have been rejected or canceled before the due date, bids shall be returned to the bidders unopened. When an award has been made copies of the opened bids and any supporting documentation shall be retained in the procurement file.

4.2.14 Multi-Step Sealed Bidding

A "multi-step sealed bid" is a multiple-phase process in which bidders first submit un-priced technical offers or samples, or both, to be evaluated by the College and then, those bidders whose technical offers or samples, or both, have been found to be acceptable submit price bids which are then considered. Bidders whose technical offers or samples are found to be unacceptable will be so notified prior to the College requesting pricing from acceptable bidders. The procedures set forth in Section 4.3.13 are to be followed when debriefing unsuccessful bidders.

4.2.15 Conversion from Competitive Sealed Bid to Negotiated Competitive Sealed Bid

In the event that a solicitation is converted from competitive sealed bids to a Negotiated Competitive Sealed Bid in accordance with Section 4.2.12.5 above:

- 4.2.15.1 Each responsible bidder in the sealed bid acquisition shall be given an opportunity to participate in negotiations and provide a revised bid;
- 4.2.15.2 If there is more than one bidder, any discussions concerning revised specifications or quantities shall be conducted with all responsible bidders. Bidders shall be accorded fair and equal treatment with respect to any discussions.
- 4.2.15.3 Discussions may not be conducted with bidders after revised bids have been submitted unless the Procurement Officer determines that there is compelling need for further negotiation.
- 4.2.15.4 The award shall be made to the responsible bidder offering the lowest negotiated price.

4.3 Competitive Sealed Proposals

4.3.1 Request For Proposals (RFP)

This procurement method employs an RFP for the solicitation of Competitive Sealed Proposals which are evaluated on the basis of factors that include but are not limited to price. Evaluation shall be based on the factors set forth in the request for proposals in order to determine which proposal best meets the needs of the College.

4.3.2 Issuance and Content of Proposals

- 4.3.2.1 The Procurement Officer shall issue a written solicitation containing all information necessary for prospective proposers to prepare a proposal. Identical information shall be furnished to all potential proposers. If indicated in the solicitation, facsimile or electronic proposals may be authorized.
- 4.3.2.2 The solicitation may be divided into multiple steps for receipt of technical and price proposals.
- 4.3.2.3 The Procurement Officer shall insure that sufficient time, but no less than that established in Section 2.1 above, is given to potential proposers to prepare responses.
- 4.3.2.4 An RFP shall include:
 - A. Date, time, and place for receipt of proposals.
 - B. The evaluation factors and an indication of the relative importance

and/or order of importance of each evaluation factor (including price). Numerical rating systems may be used but are not required. If used, numerical factors need not be disclosed in the solicitation.

- C. A statement of the services, items, or equipment required.
- D. A statement as to how and when price proposals will be submitted (if not received at the same date and time as technical proposals).
- E. All mandatory solicitation requirements in accordance with Appendix A.
- F. If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential proposers that are known to have received a copy of the solicitation.
- G. All amendments shall include a statement to the effect that proposers are required to acknowledge receipt of any amendments to the request for proposals. If appropriate, the due date shall be adjusted to ensure that sufficient time is given to prospective proposers to consider the information contained in the amendment for preparation of their responses.

4.3.3 Pre-Proposal Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-proposal conferences is not mandatory.

4.3.4 Receipt of Proposals

- 4.3.4.1 All proposals shall be placed in a secure place until the due date and time. Proposals may not be opened publicly. The Procurement Officer shall ensure that appropriate procedures are in place for the opening of proposals.
- 4.3.4.2 A register of proposals shall be prepared identifying each proposer submitting a proposal. In no event shall the register be disclosed subsequent to the due date of the financial offers and prior to the award.
- 4.3.4.3 After contract award, proposals shall be open to the public subject to the provisions of the Public Information Act, General Provisions Article, Title 4 of the Annotated Code of Maryland.

4.3.5 Mistakes, Errors, and Withdrawal of Proposals

Mistakes, errors, and withdrawals of proposal shall be treated in the same manner as provided for in competitive sealed bids in Section 4.2.9 above.

4.3.6 Late Proposals, Late Modifications, and Late Withdrawals

Late proposals, late modifications and late withdrawals shall be handled in accordance with Section 4.2.9 above.

4.3.7 Classification of Proposals

4.3.7.1 The Procurement Officer may classify proposals as:

- A. Reasonably susceptible of being selected for award; or
- B. Not reasonably susceptible of being selected for award.

4.3.7.2 Proposers judged by the Procurement Officer as not responsible or proposals not reasonably susceptible of being selected for award, shall be so classified and the proposer(s) so notified.

4.3.8 Evaluation of Proposals

4.3.8.1 Prior to the technical evaluation, the Procurement Officer shall establish the basis for the evaluation.

4.3.8.2 During the evaluation of the proposals, information contained in proposals shall not be disclosed to a prospective proposer or anyone outside of the evaluation committee except to those deemed necessary to assist the committee in evaluating the proposals. Any outside evaluator or person helping the committee shall be advised that the information discussed will be used only for evaluation purposes and shall not be further disclosed.

4.3.8.3 Proposals determined to be reasonably susceptible of being selected for award shall be evaluated as set forth in the solicitation.

4.3.8.4 Technical and price proposals shall be evaluated independently of each other. Price evaluations may be done at the completion of the technical evaluation or at the same time as the technical evaluation so long as it is done independently and the results not revealed until such time as the technical evaluation is completed.

- 4.3.8.5 Performance (past and present) may be used as an evaluation factor in determining the proposer's ability to perform under the contract. If performance is to be considered, that must be stated in the solicitation. Proposers shall be asked to provide references. In addition, the College may use itself as a reference as well as other references that may be known to the College but not provided by the proposer.
- 4.3.8.6 Multiple or alternate proposals, if permitted by the solicitation documents, shall be handled in accordance with Section 4.2.10.5 above.
- 4.3.8.7 At the discretion of the Procurement Officer following the recommendation by the evaluation committee, a short-list of qualified proposals may be established during the technical evaluation. Only those firms short-listed would continue in the evaluation process. Those firms not short-listed shall be so advised. At this point, a second phase of the technical evaluation may take place. The second phase may include oral presentations with further discussions and refinements with the short-listed firms.
- 4.3.8.8 At the conclusion of the evaluation, the Procurement Officer shall document the following:
 - A. An analysis of the technical proposals including an assessment of each proposer's ability to meet the technical requirements of the solicitation;
 - B. A summary of the findings of the evaluation committee.

4.3.9 Price Proposals

- 4.3.9.1 In accordance with Section 4.3.2.4 above, the RFP shall stipulate how and when price proposals shall be received.
- 4.3.9.2 If price proposals are received concurrently with technical proposals, price proposals will only be evaluated from proposals determined to be reasonably susceptible for award or from short-listed proposers.
- 4.3.9.3 If price proposals are received after the evaluation of technical proposals, the Procurement Officer shall solicit price proposals only from those proposers whose proposals are determined to be reasonably susceptible for award or from short-listed proposers.

4.3.10 Discussions and/or Negotiations

- 4.3.10.1 At the sole discretion of the Procurement Officer, discussions and/or negotiations may be held with all proposers still under consideration.
- 4.3.10.2 Proposers shall be treated fairly and equally with respect to any opportunity for discussions, negotiations, and clarifications. The Procurement Officer shall establish the procedures and schedule for conducting any discussions.
- 4.3.10.3 Discussions may take place at any point during the evaluation process. To the extent that information revealed during the discussions affects the ranking of proposers during the technical or price evaluation phase, the rankings may be adjusted accordingly.
- 4.3.10.4 If any discussions reveal information that requires a substantive clarification of, or change to the request for proposals, the Procurement Officer shall amend the request for proposals to incorporate the change(s) and a copy of the amendment shall be sent to all proposers still under consideration.
- 4.3.10.5 During discussions, the Procurement Officer shall not disclose or permit to be disclosed any information from a competing proposal or advise a proposer of its standing relative to another proposer.
- 4.3.10.6 The Procurement Officer may allow the proposer a reasonable opportunity to submit any technical, cost, financial, or other information and materials, or revisions to its proposals that may result from the discussions.
- 4.3.10.7 A record of each discussion shall be kept in the procurement file.

4.3.11 Best and Final Offers

- 4.3.11.1 When the Procurement Officer determines it is in the best interest of the College, proposers may be permitted to revise their proposals by submitting a best and final offer or series of best and final offers.
- 4.3.11.2 The Procurement Officer shall establish a due date and time for best and final offers.
- 4.3.11.3 A proposer's previous offer shall be deemed final unless a new best and final offer is submitted as requested.

4.3.12 Basis of Award

Award shall be made to the responsible proposer whose overall technical and financial proposal was evaluated as best meeting the needs of the College as set forth in the RFP. The College may make multiple awards if it is deemed to be in the best interest of the College, and if provided for in the solicitation.

4.3.13 Debriefing of Unsuccessful Proposers

- 4.3.13.1 Unsuccessful proposers may request a debriefing. If the proposer chooses to do so, the request must be submitted in writing to the Procurement Officer within ten days after the proposer knew or should have known its proposal was unsuccessful. Debriefings shall be limited to discussion of the specific proposer's proposal only and shall not include a discussion of a competing offeror's proposal. Debriefings shall be conducted at the earliest feasible time.
- 4.3.13.2 The debriefing may include information on areas in which the unsuccessful proposer's proposal was deemed weak or insufficient.
- 4.3.13.3 Debriefing may not include discussion or dissemination of the thoughts, notes or rankings of individual members of an evaluation committee.
- 4.3.13.4 Debriefing may include a summary of the Procurement Officer's rationale for the selection decision and recommended award.

4.3.14 Award of Competitive Sealed Proposals

Notice of award shall be published in the College's official bid board and/or by direct notification to all proposers.

4.4 Unsolicited Proposals

4.4.1 Defined

At the recommendation of the Procurement Officer, the College may accept an unsolicited proposal for evaluation if the proposal:

- 4.4.1.1 is innovative and unique;
- 4.4.1.2 was independently originated and developed by the Proposer;
- 4.4.1.3 was prepared without the supervision of the College
- 4.4.1.4 includes sufficient detail to permit a determination that College support would be worthwhile; and
- 4.4.1.5 shows that the proposal would benefit the College.

4.4.2 Documentation

Unsolicited proposals shall contain information to permit consideration in an objective and timely manner, such as;

- 4.4.2.1 The Proposer's name and address and type of organization, such as profit, nonprofit, educational, or certified minority business enterprise;
- 4.4.2.2 The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- 4.4.2.3 The identification of proprietary data to be used only for evaluation purposes;
- 4.4.2.4 The signature of a person authorized to represent and contractually obligate the proposer;
- 4.4.2.5 The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- 4.4.2.6 The period of time for which the proposal is valid;
- 4.4.2.7 The type of contract preferred; and
- 4.4.2.8 The proposed duration of the effort.

4.4.3 Evaluation of Unsolicited Proposals

When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:

- 4.4.3.1 The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
- 4.4.3.2 The overall scientific, technical, or socio-economic merits of the proposal;
- 4.4.3.3 The potential contribution of the effort to the College's specific mission.
- 4.4.3.4 The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and

4.4.3.5 The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

4.4.4 Return of Unsolicited Proposals

The College must reject an unsolicited proposal and it shall be returned to the proposer, citing reasons, when its substance meets any of the following:

4.4.4.1 It is available to the College without restriction from another source;

4.4.4.2 It closely resembles a pending competitive procurement; or

4.4.4.3 It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to the College on the basis of competitive proposals.

4.4.4.4 If the proposal is deemed not in the best interest of the College or is deemed by the College as not of value to the College.

4.4.4.5 If the College has no requirement for what is proposed and/or the proposal is not affordable.

4.4.5 Requirement to Make an Award

A favorable evaluation of an unsolicited proposal does not, by itself, require the College to make an award.

4.4.6 Negotiations: The Procurement Officer may negotiate.

4.4.7 Notice of Award: The Procurement Officer will post a notice of award for any accepted unsolicited proposal.

4.5 Procurement by Cooperative Purchasing Agreements

4.5.1 The College may participate in, conduct, sponsor or administer a cooperative purchasing agreement. The purpose of such agreements is to promote efficiency and savings that can result from cooperative purchasing. This includes but is not limited to agreements with any of the following:

4.5.1.1 The federal government or an agency or other instrumentality of the federal government;

- 4.5.1.2 The State of Maryland, another state, or an agency or other instrumentality of another state;
- 4.5.1.3 A bistate or multistate agency;
- 4.5.1.4 A county, municipal corporation, or other political subdivision of the State or of another state, or an agency or other instrumentality of the political subdivision;
- 4.5.1.5 Other institutions of higher education and the University of Maryland Medical System.
- 4.5.1.6 A cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions to maximize economies of scale when soliciting bids or proposals.
- 4.5.1.7 Alumni associations, foundations, and faculty practice organizations recognized by the Board of Trustees, in accordance with Education Article Section 15-104.

SECTION 5. CONTRACT TYPES

5.1 General

5.1.1 A wide selection of contract types is available to the College in order to provide needed flexibility in acquiring the variety and volume of supplies, services and maintenance required by the College. Contract types vary according to:

5.1.1.1 The degree and timing of the responsibility assumed by the contractor for cost of performance; and

5.1.2 The amount and nature of profit incentive offered to the contractor for achieving or exceeding specific standards or goals.

5.1.3 The following contract types are available:

5.1.3.1 Fixed Price Contracts: in which the contractor has full responsibility for the performance cost and resulting profit (or loss).

5.1.3.2 Quantity Contracts/Requirements Contracts: in which multiple orders can be placed based on defined units of service or product for a specific period of time and in which the contractor has full responsibility for the performance cost and resulting profit (or loss).

5.1.3.3 Cost Reimbursement Contracts: -in which the contractor's responsibility for performance costs and profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

5.1.3.4 Time and Material Contracts / Labor Hour Contracts:

A. "Time and material contract" means a contract which provides an agreed basis for payment for materials supplied and labor performed.

B. "Labor hour contract" means a contract which only provides for the payment of labor performed.

C. Ceiling. Labor hour and time and material contracts shall state a dollar ceiling that may not be exceeded without the prior determination and approval of the procurement officer.

5.1.3.5 Incentive Contracts: in which the profit or fee payable under the contract is directly related to the contractor's performance. Incentive

contracts can either be fixed price contracts with an incentive or cost reimbursable contracts with an incentive.

- 5.1.4 Individual contracts may include elements of two or more types of contracts such as a fixed price contract with unit prices, allowances, or reimbursements.
- 5.1.5 Except in case of emergency affecting the public health, safety or welfare of the College community, no contract using Federal funds shall be awarded on a cost plus- percentage of cost basis.

5.2 Factors in Selecting Contract Types

- 5.2.1 There are many factors that the Procurement Officer should consider in selecting the contract type. They include but are not limited to the following:
 - 5.2.1.1 Price competition: Normally, effective price competition results in realistic pricing, and a fixed- price contract is ordinarily in the College's best interest.
 - 5.2.1.2 Price analysis: Price analyses may provide a basis for selecting the contract type.
 - 5.2.1.3 Cost Analysis: Uncertainties involved in performance and their impact on costs should be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be selected.
 - 5.2.1.4 Urgency of the Requirement: If urgency is a primary factor, the College may choose to assume a greater proportion of risk or offer incentives to ensure timely contract performance.
 - 5.2.1.5 Period of performance: In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
 - 5.2.1.6 Contractor's Capability: Technical capability and financial responsibility of the contractor.
 - 5.2.1.7 Adequacy of Contractor's accounting system: Except for a firm fixed-price contract, the Procurement Officer should determine that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted

accounting principles

5.3 Fixed-Price Contracts

5.3.1 General

- 5.3.1.1 Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price.
- 5.3.1.2 Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both.
- 5.3.1.3 Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

5.3.2 Description

- 5.3.2.1 A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
- 5.3.2.2 This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.
- 5.3.2.3 The Procurement Officer may use a firm-fixed-price contract in conjunction with performance or delivery incentives. The contract type remains firm-fixed-price when used with these incentives.

5.3.3 Application

- 5.3.3.1 A firm -fixed-price contract is suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when the Procurement Officer can establish fair and reasonable prices at the outset, such as when-

- A. There is adequate price competition;
- B. There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive

basis or supported by valid cost or pricing data;

- C. Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- D. Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

5.4 Quantity Contracts/Requirements Contracts

5.4.1 Definitions

- 5.4.1.1 "Definite quantity contract" means a fixed-price contract that provides for delivery of a specified amount of goods or labor either at specified times or when ordered.
- 5.4.1.2 "Indefinite quantity contract" means a contract for an indefinite amount of goods or labor to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type.
- 5.4.1.3 "Requirements contract" means an indefinite quantity contract for goods or labor that obligates the State to order all the actual requirements of designated using agencies during a specified period of time.

5.4.2 General

- 5.4.2.1 There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.
- 5.4.2.2 Definite-quantity contracts allow the College to buy a specific quantity of goods or services within a range of indefinite delivery dates.
- 5.4.2.3 Requirements contracts require the College to purchase all its requirements for a specified product or service via the contract.
- 5.4.2.4 Indefinite-quantity contracts allow the College to buy a non--specific quantity within a specified range of products over a specified period of time.

5.4.2.5 The various types of indefinite-delivery contracts offer the following advantages:

All three types permit-

- A. College stocks to be maintained at minimum levels; and
- B. Direct shipment to users on Campus.

5.4.2.6 Indefinite-quantity contracts and requirements contracts also permit-

- A. Flexibility in both quantities and delivery scheduling; and
- B. Ordering of supplies or services after requirements materialize.

5.4.2.7 Indefinite-quantity contracts limit the College's obligation to the minimum quantity specified in the contract.

5.4.2.8 Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the College will obtain all of its actual purchase requirements from the contractor.

5.4.2.9 Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under this Section 5. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the following:

- A. The contract must require the College to order and the contractor to furnish at least a stated minimum quantity of supplies or services.
- B. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum.
- C. The procurement officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.
- D. To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the College is fairly certain to order.
- E. The contract may also specify maximum or minimum quantities

that the College may order under each task or delivery order and the maximum that it may order during a specific period of time.

5.4.2.10 A solicitation and contract for an indefinite quantity must:

- A. Specify the period of the contract, including the number of options and the period for which the College may extend the contract under each option;
- B. Specify the total minimum and maximum quantity of supplies or services the College will acquire under the contract;
- C. Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the College will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;
- D. State the procedures that the College will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the College will use to provide awardees a fair opportunity to be considered for each order (see 5.4.3.2).

5.4.3 Ordering

5.4.3.1 General

- A. The Procurement Officer does not solicit orders under indefinite-delivery contracts.
- B. Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.
- C. Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services.
- D. Orders may be placed by using any medium specified in the contract.
- E. Orders placed under indefinite-delivery contracts must contain the following information:

- (1) Date of order.
- (2) Contract number and order number.
- (3) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.
- (4) Delivery or performance schedule.
- (5) Place of delivery or performance (including consignee).
- (6) Any packaging, packing, and shipping instructions
- (7) Accounting and appropriation data.
- (8) Method of payment and payment office, if not specified in the contract

5.4.3.2 Orders under multiple award contracts- Fair opportunity.

- A. In the event of multiple awards to two or more vendors, the Procurement Officer must provide each awardee a fair opportunity to be considered for each order exceeding \$5,000 issued under multiple delivery-order contracts or multiple task-order contracts.
- B. The Procurement Officer may exercise broad discretion in developing appropriate order placement procedures. The Procurement Officer should keep submission requirements to a minimum. The Procurement Officer may use streamlined procedures, including oral presentations. In addition, the Procurement Officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the Procurement Officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.
- C. The competition requirements in Section 3 do not apply to the ordering process. However, the Procurement Officer must-
 - (1) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
 - (2) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
 - (3) Tailor the procedures to each acquisition;
 - (4) Include the procedures in the solicitation and the contract; and
 - (5) Consider price or cost under each order as one of the factors in the selection decision.

5.4.3.3 The Procurement Officer should consider the following when

developing the procedures:

- A. Past performance on earlier orders under the contract, including quality, timeliness, and cost control.
- B. Potential impact on other orders placed with the contractor.
- C. Minimum order requirements.
- D. The amount of time contractors need to make informed business decisions on whether to respond to potential orders.
- E. Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as seeking comments from two or more contractors on draft statements of work;
- F. Using a multi-phased approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the College to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.
- G. Formal evaluation plans or scoring of quotes or offers are not required.

5.4.3.4 Exceptions to the fair opportunity process. The Procurement Officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$25,000 unless one of the following statutory exceptions applies:

- A. The College need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- B. Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
- C. The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were

given a fair opportunity to be considered for the original order.

D. It is necessary to place an order to satisfy a minimum guarantee.

5.4.3.5 Pricing orders. If the contract did not establish the price for the supply or service, the Procurement Officer must establish prices for each order using the policies and methods in Section 5 of these Procurement Policies and Procedures.

5.4.3.6 Decision documentation for orders. The Procurement Officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

5.5 Cost-Reimbursement Contracts

5.5.1 Description

5.5.1.1 Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent described in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Procurement Officer. The Procurement Officer may use a cost-reimbursement contract in conjunction with performance or delivery incentives.

5.5.2 Application

5.5.2.1 Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

5.5.3 Limitations

5.5.3.1 A cost-reimbursement contract may be used only when-

- A. The contractor's accounting system is adequate for determining costs applicable to the contract; and
- B. Appropriate College surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

5.5.3.2 The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items.

5.6 Time-and-materials Contracts

5.6.1 Description. A time-and-materials contract provides for acquiring supplies or services on the basis of:

- 5.6.1.1 Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- 5.6.1.2 Materials at cost, including, if appropriate, material handling costs as part of material costs.

5.6.2 Application. A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

5.6.3 College surveillance. A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate College surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

5.6.4 Material handling costs. When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with the laws of Maryland.

5.6.5 Optional method of pricing material. When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—

5.6.5.1 The total estimated contract price does not exceed \$25,000 or the

estimated price of material so charged does not exceed 20 percent of the estimated contract price;

5.6.5.2 The material to be so charged is identified in the contract;

5.6.5.3 No element of profit on material so charged is included as profit in the fixed hourly labor rates; and

5.6.5.4 The contract provides-

A. That the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the College; and

B. That in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

5.6.6 Limitations. A time-and-materials contract may be used (1) only after the Procurement Officer executes a determination and findings that no other contract type is suitable; and (2) only if the contract includes a ceiling price that the contractor exceeds at its own risk. The Procurement Officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

5.7 Labor-hour contracts

5.7.1 Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See Section 5.6 for application and limitations, respectively.

5.8 Incentive Contracts

5.8.1 The use of incentives in contracts as described below is appropriate when the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. The use of incentives in contracts is designed to obtain specific acquisition objectives by-

5.8.1.1 Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

5.8.1.2 Including appropriate incentive arrangements designed to-

- A. motivate contractor efforts that might not otherwise be emphasized; and
 - B. discourage contractor inefficiency and waste.
- 5.8.2 When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met.
- 5.8.3 The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.
- 5.8.4 The two basic categories of incentive contracts are fixed-price incentive contracts and cost-reimbursement incentive contracts. Since it is usually to the College's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain.

SECTION 6. CONTRACT ADMINISTRATION

6.1 Purpose and Scope

6.1.1 Contract administration begins with the signing or execution of a contract or purchase order. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the College's purchasing system demands the goods or services are furnished as specified in the contract. Contract administration includes all actions taken by the College relative to a specific contract after the award is made. A contract administrator is typically identified in each contract.

6.1.2 The College shall comply with Section 11-203(e) of the State Finance and Procurement Article. This section includes provisions of Division II of the State Finance and Procurement Article that apply to the College. These include: Section 11-205 (Collusion); Section 11-205.l (Falsification of Material Facts); Section 13-219 (Required Clauses- Nondiscrimination Clause); Section 13-225 (Retainage); Title 14, Subtitle 1 (Preferences to Benefit Disadvantaged Individuals) to the maximum extent possible and Subtitle 3 (Minority Business Participation); Title 15, Subtitle 1 (Procurement Contract Administration); Section 15-226 (Prompt Payment of Subcontractors); and Title 16 (Debarment of Contractors).

6.2 Authority and Responsibility

6.2.1 The Procurement Officer is responsible for the technical and administrative sufficiency of the College's contracts and shall seek legal, technical, and other advice within the College, including its assistant attorney general, in fulfilling these responsibilities.

6.2.2 Contract administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments and closeout.

6.2.3 Contract administration is the responsibility of the Procurement Officer, who may delegate it to another College official, with the approval of the President or Designee.

6.2.4 The Procurement Officer is typically an individual in the College's Purchasing Department. In instances where the Procurement Officer is an individual outside of the Purchasing Department, then the Purchasing Department will provide support required for the solicitation and administration of the contract.

6.3 Contract Execution

- 6.3.1 All procurement contracts equal to or over \$50,000 in value (including the value of all options or renewals) shall require two signatures by both the Director of Procurement and Chief Financial Officer. Only those College employees or officers designated by the President or Designee shall have authority to sign procurement contracts.
- 6.3.2 Generally, authorized College representatives should execute contract documents after the contract documents have been executed by the contractor and approved for form and legal sufficiency.
- 6.3.3 The contract shall be signed by the appropriate representative(s) of the contractor with the authority to bind the firm to the terms of the contract.
- 6.3.4 A contract with a joint venture may involve any combination of individuals, partnerships or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.
- 6.3.5 Review of Contracts for Legal Form and Sufficiency: Before a procurement contract may be approved and executed, it shall be reviewed for legal form and sufficiency by the College's legal counsel (or assistant attorney general) as provided below.
- 6.3.6 Contracts documented on a purchase order form, which includes the standard terms and conditions of these Procurement Policies and Procedures, and which do not include any terms and conditions which conflict with the standard purchase order terms, do not require further review for legal form and sufficiency.
- 6.3.7 Contracts documented on a standard procurement contract form, which includes the standard terms and conditions stipulated, as appropriate (depending on the dollar value of the contract and the nature of the contract, e.g., construction,) in the Appendices of these Procurement Policies and Procedures, and which do not include any terms which conflict with the standard procurement contract form's terms and conditions, do not require further review for form and legal sufficiency.
 - 6.3.7.1 Other contract documents (e.g., as payment, performance, and bid bond documents, solicitation documents) shall substantially comply with the terms and conditions identified in Appendix A.
 - 6.3.7.2 Documents submitted by a contracting party other than the College, which that party seeks to have included as part of the contract between the parties, must be reviewed for content and legal form and sufficiency. Review of contract documents should ensure that the

content is consistent with the scope of the contract, and does not modify the terms of the agreement. Any change to the contract shall be made only by a formal contract modification referencing the applicable terms of the contract. Modification of documents submitted by a party other than the College may be made by the Procurement Officer and, as appropriate, by legal counsel.

6.4 Contract Modifications

6.4.1 All contract modifications shall be in writing and signed by the contractor and those College employees or officers authorized to sign on behalf of the College. If possible, contract modifications shall be signed by the same College employee(s) or official(s) that signed the initial contract. In the event that the College employee(s) or official(s) who signed the initial contract are not available, then, the President or Designee, or his/ er designee, shall sign the contract modification. Contract modifications are effective on the date of the last required signature, unless otherwise specified in the modification.

6.4.2 Before a contract, which required approval by the Board of Public Works, is modified, the proposed modification must comply with applicable Board of Public Works requirements for approval.

6.5 Delivery and Performance

The time of delivery or performance is an essential contract element and shall be clearly stated in each contract. Delivery or performance must be met by the date or period specified or the contractor may be considered to be in default.

6.6 Payment

The contract documents are to include the process by which payments are to be made.

6.7 Closeout of Contracts

The Procurement Officer shall adopt internal policies and procedures to ensure that contract closeout is conducted properly.

6.8 Termination of the Contract

Generally, a contract is for a specified term, as defined in the contract documents. A contract may be terminated, upon approval of the President or Designee, earlier than the specified term under the following circumstances:

6.8.1 as provided by the terms and conditions of the contract,

- 6.8.2 upon the mutual written agreement of the parties,
- 6.8.3 by the College, for lack of appropriations or other funds in accordance with Appendix B,
- 6.8.4 by the College, for default in accordance with Appendix B, and
- 6.8.5 by the College, for convenience in accordance with Appendix B, if termination for convenience is in the best interests of the College or the State of Maryland.

SECTION 7. VENDORS

7.1 Debarment/Suspension

7.1.1 The College shall abide by the Code of Maryland Regulations (COMAR) Title 21, Subtitle 08 with regard to all debarments/suspensions.

7.1.2 In determining the status of a business or person about debarment/suspension in the State of Maryland, the College shall refer to the Maryland Board of Public Works published list of Businesses & Persons Suspended or Debarred.

7.2 Vendor Pre-Qualifications

The Procurement Officer may limit bids to those vendors pre-qualified in accordance with the procedures established in Section 4.

7.3 Vendor Responsibility

7.3.1 The Procurement Officer shall make purchases from and award contracts only to responsible contractors.

7.3.2 In the absence of information clearly indicating that the prospective contractor is responsible, the Procurement Officer shall make a determination of non-responsibility.

7.3.3 Factors to be used in determining whether a vendor is responsible may include, but are not limited to:

7.3.3.1 Financial resources adequate to perform the contract, or the ability to obtain them;

7.3.3.2 Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

7.3.3.3 A satisfactory performance record;

7.3.3.4 A satisfactory record of integrity and business ethics;

7.3.3.5 The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

7.3.3.6 Compliance with applicable licensing and tax laws and regulation.

7.3.3.7 The necessary production, construction, and technical equipment

and facilities, or the ability to obtain them;

7.3.3.8 Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

7.3.4 If the Procurement Officer determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the Procurement Officer may determine the prospective contractor to be non-responsible.

7.3.5 The prospective contractor shall promptly supply information requested by the Procurement Officer regarding the responsibility of the prospective contractor.

7.3.6 If the prospective contractors fails to supply the information as requested, the Procurement Officer shall make the determination of responsibility or non-responsibility based upon available information.

7.3.7 The Procurement Officer may use the following sources of information as appropriate, to support determination of responsibility or non-responsibility:

7.3.7.1 The Maryland State Board of Public Works list of Businesses and Persons Suspended or Debarred:

7.3.7.2 Records, past performance, and experience data, including verifiable knowledge of BCCC and State of Maryland personnel;

7.3.7.3 Being in good standing with the State, including information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

7.3.7.4 Federal disqualification listing of ineligible and debarred contractors.

7.3.8 When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Procurement Officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination and so notify the prospective contractor.

SECTION 8. SOCIO-ECONOMIC POLICIES AND COMPLIANCE

Pursuant to Chapter 732 of the Laws of Maryland 2021, Baltimore City Community College shall comply with the subtitles listed below of Title 14 of the State Finance and Procurement Article of the Annotated Code of Maryland and applicable Maryland regulations.

In addition, the College shall recognize reciprocal certification with other governmental agencies but shall not include these procurements in reporting governed under current State law.

8.1 Preferences to Benefit Disadvantaged Individuals

The College shall comply with provisions set forth in Title 14, subtitle 1 (Preferences to Benefit Disadvantage Individuals) to the maximum extent practicable for the purchases of all supplies and services.

8.2 Small Business Procurements

The College shall comply with provisions set forth in Title 14, subtitle 2 (Small Business Reserve Procurements), Code of Maryland Regulations (COMAR) 21.11.01, Executive Orders, and any policies and procedures outlined by the Governor's Office of Small, Minority and Women Business Affairs (GOSBA).

8.3 Minority Business Participation

The College shall comply with provisions set forth in Title 14, subtitle 3 (Minority Business Participation), COMAR 21.11.03, and any policies and procedures outlined by the GOSBA.

8.4 Certified Local Farm Enterprise Program

The College shall comply with provisions set forth in Title 14, subtitle 7, and any policies and procedures outlined by the Maryland Department of Agriculture.

8.5 Goal Settings

8.5.1 The College shall establish a Procurement Review Group (PRG) to review and assess the feasibility of assigning and designating certain goals and designation to a procurement in accordance with the provisions of Title 14, subtitle 2 (Small Business Program), subtitle 3 (Minority Business Participation), and subtitle 7 (Certified Local Farm Enterprise Program).

8.5.2 The College will determine the appropriate dollar thresholds as to when a procurement shall be presented to the PRG for goal setting and designation.

8.5.3 The College shall utilize documentation that has been reviewed and approved by the GOSBA and / or by the Board of Public Works.

SECTION 9. PROTESTS AND CLAIMS

9.1 General

- 9.1.1 An aggrieved party shall exhaust all administrative remedies provided in this section before seeking judicial review.
- 9.1.2 Under this section, if the last day for taking an action falls on a day when the filing office is closed; the file date will be the next day the filing office is open.
- 9.1.3 "Appeal" shall mean an appeal of a decision of the Procurement Officer in connection with a protest or a contract claim. All appeals shall be in writing and made within the time permitted by these Procurement Policies and Procedures. All appeals shall be to the Maryland State Board of Contract Appeals.
- 9.1.4 "Hearing Board" shall mean the Maryland State Board of Contract Appeals.
- 9.1.5 Delegation of Authority: Upon the approval of these Policies and Procedures, the Maryland State Board of Contract Appeals ("Hearing Board") shall be delegated the authority, subject to and in accordance with these Procurement Policies and Procedures, to conduct hearings in connection with Appeals, to make findings of fact and conclusions of law, as appropriate, and to make and issue the final administrative agency decision and order. The Hearing Board shall have authority over all appeals arising on or after the effective date of these Policies and Procedures.
- 9.1.6 A final administrative agency decision, issued by the Hearing Board, is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases, State Government Article, Md. Annotated Code, Section 10-222. The College is entitled to seek judicial review of a final administrative agency decision.
- 9.1.7 To the extent reasonably possible, all procurement contracts shall identify the Hearing Board and provide contact information for the Hearing Board.
- 9.1.8 All references in this Section 9 to Maryland statutes and regulations shall mean the statute and/or regulation, as amended from time to time.
- 9.1.9 "Reviewing Authority" as referenced in COMAR Title 21, Subtitle 10, shall mean the President, or his/her designee, unless otherwise specified in these Procurement Policies and Procedures.
- 9.1.10 In the filing of a protest or claim, the contractor shall have the burden of proof and the burden of going forward with the evidence of all issues, including the propriety of a determination for default.

9.2 Protests

9.2.1 Definitions: The following words have the meanings indicated:

- 9.2.1.1 Filed: received by the Procurement Officer, or the Hearing Board depending on the context.
- 9.2.1.2 Interested party: an actual or prospective bidder, proposer, or contractor that may be aggrieved by the solicitation or award of a contract, or by a protest.
- 9.2.1.3 Protest: a complaint relating to the solicitation or award of a procurement contract.
- 9.2.1.4 Protestor: means any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest.

9.2.2 Filing a Protest

- 9.2.2.1 An interested party may file a protest with the Procurement Officer.
- 9.2.2.2 The protest shall be in writing and addressed to the Procurement Officer.

9.2.3 Timing for Filing

- 9.2.3.1 A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date and time of receipt of initial proposals.
- 9.2.3.2 A protest based upon alleged improprieties in a solicitation that did not exist in the original solicitation but which are subsequently incorporated in an amendment to the solicitation shall be filed not later than the solicitation closing date and time for receipt of bids or proposals identified in the amendment (or in the original solicitation, if the opening date and time were not changed by amendment).
- 9.2.3.3 In cases other than those covered in 9.2.3.1 and 9.2.3.2 above, protests shall be filed not later than seven (7) calendar days after the basis for the protest is known or should have been known, whichever is earlier.
- 9.2.3.4 A protest received by the Procurement Officer after the time limits described above may not be considered.

9.2.3.5 All costs associated with filing and prosecuting a protest shall be borne by the protestor.

9.2.4 Requested Information

9.2.4.1 The written protest shall include the following information:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement;
- C. A statement of reasons for the protest; and,
- D. Supporting exhibits, evidence or documents to substantiate the reasons for the protests.

9.2.4.2 Any additional information or substantiation requested by the Procurement Officer shall be submitted within five (5) days after receipt of the request by the Protestor. Failure of any party to comply with a request for information or substantiation by the Procurement Officer may result in a resolution of the protest without consideration of any response to the request that is not timely filed.

9.2.4.3 Upon written request, the Procurement Officer shall make available to any interested party information submitted that bears on the substance of the protest except when information is confidential, or otherwise is permitted or required to be withheld by law.

9.2.5 Notification to the College's Legal Counsel and the Office of the Attorney General

The Procurement Officer shall submit a copy of the protest to both the College's Legal Counsel and the State's Office of the Attorney General upon receipt of the protest and shall, as appropriate, consult with legal counsel.

9.2.6 Negotiations with Interested Parties

The Procurement Officer may conduct discussions and, if appropriate, negotiations with the protester or any other interested party and may resolve the protest by agreement with any one or more interested parties. The agreement shall be in writing and approved by the appropriate parties.

9.2.7 Decision by the Procurement Officer

9.2.7.1 A decision on a protest shall be made by the Procurement Officer in writing as expeditiously as possible after receiving all relevant, requested information.

9.2.7.2 The decision of the Procurement Officer shall be reviewed and approved by the President or his/ her designee, in consultation as

appropriate, with legal counsel and other College authorities.

- 9.2.7.3 The decision of the Procurement Officer shall include:
- A. a description of the controversy and
 - B. a statement of the decision, with supporting material.
 - C. If the protest is not sustained, a paragraph substantially as follows shall be included in the decision. "This decision is the Procurement Officer's final action. This decision may be appealed in writing to the Maryland State Board of Contract Appeals in accordance with these Procurement Policies and Procedures. If you decide to take such an appeal, you must file written notice of appeal with the Maryland State Board of Contract Appeals, with a copy to the President or Designee, within 10 days from the date you receive this decision." This paragraph shall also include the current address for the Maryland State Board of Contract Appeals and the current name and address of the President or Designee.
- 9.2.7.4 The Procurement Officer shall furnish a copy of the decision to the protester and all other interested parties, by email, certified mail, return receipt requested, or by any other method that provides evidence of receipt, including facsimile transmission.

9.2.8 Appeals

- 9.2.8.1 Protestors are required to seek resolution of their complaints with the Procurement Officer, as provided above.
- 9.2.8.2 A subsequent appeal by a protester of a decision by the Procurement Officer shall be in writing and filed with the Maryland State Board of Contract Appeals, with a copy to the President or Designee, within 10 days of receipt of the Procurement Officer's decision. All costs associated with filing and prosecuting an appeal shall be borne by the Protestor. The notice of appeal shall i) include the name and address of the protester; ii) identify the solicitation and, if awarded, the contract; iii) contain a statement of the grounds for appeal; and iv) specify the ruling requested by the Hearing Board. The protester shall attach to the notice of appeal a copy of the decision by the Procurement Officer and any supporting exhibits relied upon.
- 9.2.8.3 The Hearing Board shall notify, as appropriate, the protester, the contractor, the College, and other interested parties of receipt of the notice of appeal and provide further direction, as necessary, for the appeal.

9.2.8.4 Appeals of protests shall be handled as follows:

- A. The Hearing Board shall handle the appeal in accordance with these Procurement Policies and Procedures and COMAR 21.10.05 (MSBCA - General) and 21.10.07 (Procedures for Appealing Protests).
- B. All references to the "Appeals Board" in COMAR 21.10.05 and 21.10.07 shall be read and interpreted, as appropriate, to refer to the Hearing Board as identified in these Policies and Procedures.

9.2.8.5 The Hearing Board shall issue the final administrative agency decision, which is subject to judicial review.

9.2.9 Awards of Contracts Pending Protests and Appeals

9.2.9.1 If a timely protest has been filed, the contract may be awarded if:

- A. a finding is made that execution of the contract without delay is necessary to protect substantial State of Maryland or College interests or
- B. the Hearing Board makes a final decision concerning the appeal.

9.2.9.2 Unless the Board of Public Works has final authority to approve the award, the finding may be made by the Vice President for Business and Finance. If the Board of Public Works has final approval authority, the Board of Public Works will make the finding.

9.3 Claims

Except as provided herein, contract claims shall generally be filed and processed pursuant to COMAR 21.10.04. References to the "Appeals Board" shall be read and interpreted, as appropriate, to refer to the Hearing Board as identified by these Procurement Policies and Procedures.

9.3.1 Prior to filing a contract claim, the contractor shall contact the Procurement Officer and attempt, in good faith, to resolve by mutual agreement any disputes or disagreements that arise in connection with the contract.

9.3.2 A contractor may assert a contract claim against the College and the College may assert a contract claim against a contractor.

9.3.3 The Procurement Officer shall submit a copy of a contract claim to the College's Legal Counsel and the State's Office of Attorney General upon receipt of the claim

and shall, as appropriate, consult with legal counsel.

- 9.3.4 The written decision of the Procurement Officer regarding a contract claim shall be reviewed and approved by the President or Designee in consultation as appropriate, with legal counsel and other College authorities.
- 9.3.5 Upon determination of a contract claim by the Procurement Officer, a paragraph substantially as follows shall be included in the decision by the Procurement Officer: "This decision is the Procurement Officer's final action. This decision may be appealed in writing to the Maryland State Board of Contract Appeals in accordance with these Procurement Policies and Procedures. If you decide to take such an appeal, you must file written notice of appeal with the Maryland State Board of Contract Appeals, with a copy to the President or Designee, within 30 days from the date you receive this decision." This paragraph shall also include the current address of the Maryland State Board of Contract Appeals and the current name and address of the Vice President of Business and Finance.
- 9.3.6 The Procurement Officer shall furnish a copy of the decision to the claimant and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, including facsimile transmission.
- 9.3.7 Appeals of a decision by the Procurement Officer on a contract claim shall be handled as follows:
 - 9.3.7.1 Notice of an appeal shall be filed with the Maryland State Board of Contract Appeals with a copy to the President or Designee. The Hearing Board shall notify, as appropriate, the contractor, the agency, and other interested parties of receipt of the notice of appeal and provide further direction, as necessary, for the appeal.
 - 9.3.7.2 All costs associated with filing and prosecuting an appeal by a Contractor shall be borne by the Contractor.
 - 9.3.7.3 The Hearing Board shall handle the appeal in accordance with these Procurement Policies and Procedures and Title 15, Subtitle 2 of the State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.10.05 (MSBCA - General) and COMAR 21.10.06 (Procedures for Appealing Contract Disputes).
 - 9.3.7.4 All references to the "Appeals Board" in Title 15, Subtitle 2, of the State Finance and Procurement Article and applicable Maryland regulations shall be read and interpreted, as appropriate, to refer to the Hearing Board as identified by these Procurement Policies and Procedures.
 - 9.3.7.5 The Hearing Board shall issue the final administrative agency decision, which is subject to judicial review.

SECTION 10. DEFINITIONS

ACQUISITION - The obtaining of goods and services through best methods and business practices.

A/E - Architectural and Engineering

ALTERNATE BID - A dollar amount to be added to or subtracted from the bid for a variation in the item being bid upon. Alternate bids may be either add or deduct alternate bids.

ARCHITECTURAL SERVICES

Architectural services are professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that require architectural education, training, and experience.

Architectural services include consultation, research, investigation, evaluation, planning, programming, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, and electrical engineers and other consultants.

Architectural services do not include construction inspection services or services provided in connection with an energy performance contract.

AWARD - The transmission by the procurement agency, after all required approvals have been obtained, of the executed contract or written notice of award to the selected vendor.

BCCC – Baltimore City Community College

BEST AND FINAL OFFERS - A procedure conducted that permits qualified offerors to revise their initial proposals when determined by the Procurement Officer to be in the best interest of the College.

BID - A statement of price, terms of sale, and description of the supplies, services, construction, or construction-related services offered by a bidder in response to an invitation for bids under procurement by competitive sealed bidding or comparable simplified procurement procedures.

BID BOARD - A bulletin board, including an electronic bulletin board, in a public place displaying solicitations or announcements of the availability of solicitations.

BID SECURITY - In addition to bid bond, acceptable security includes:

- a bond in a form satisfactory to the College underwritten by a surety company authorized to do business in the State.
- a bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;

- a pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
- an irrevocable letter of credit in a form satisfactory to the Procurement Officer and issued by a financial institution approved by the State Treasurer.

BIDDER - One who submits an offer or bid in response to a solicitation.

BLANKET PURCHASE ORDER (BPO) - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period and specifically identifies these persons authorized to accept goods.

BROKER - A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:

1. Supplies:
 - a. Does not own, operate, or maintain a place of business in which supplies of the general character required under the contract are kept in stock in the regular course of business,
 - b. Does not regularly assume physical custody or possession of supplies of comparable character to those offered to the State, or
 - c. Exclusively acts as a middleman in the provision of supplies offered to the State; or
2. Services: does not regularly maintain the capability, capacity, training, perience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the State, and acquires the services elsewhere, for the benefit of the State.

BUSINESS - Any profit or not for profit corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

CAPITALIMPROVEMENT - Construction or an architectural service as defined herein.

CHANGE ORDER - A written order signed by the responsible Procurement Officer, directing a contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the contractor.

COLLABORATIVE AGREEMENT - A business agreement between the College and another party or parties, the primary purpose of which is other than the acquisition on the part of the College of goods and/or services.

COLLEGE - Baltimore City Community College, an agency of the State of Maryland, as

authorized by Md. Education Code Ann., Title 16, subtitle 5.

COMMODITY - An item of purchase which may include office goods and materials, food, printing, building materials, and other items needed to support normal operations.

COMPETITIVE BIDDING - Bids or offers by individuals or vendors competing for a contract, privilege, or right to supply specified services or goods.

COMPETITIVE SEALED BID - A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids.

COMPETITIVE SEALED PROPOSALS - The procurement method to be used in those situations when competitive sealed bidding cannot be used because of the inability to prepare specifications that would permit an award based solely on price; or when it is impracticable or disadvantageous to the College.

COMPTROLLER - The Comptroller of the Treasury of the State.

CONSTRUCTION - Construction means the process of building, altering, improving, replacing, demolishing any structure, building, building system, infrastructure, or other improvement to real property. Construction does not include the maintenance or routine operation of an existing improvement to real property, or activities related to an energy performance contract.

CONSTRUCTION MANAGEMENT - A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

CONTRACT - An agreement entered into by a procurement agency for the acquisition of supplies, services, construction, architectural services, or engineering services.

CONTRACT ADMINISTRATION - The management of all facets of a contract to assure the vendor's total performance is in accordance with the contractual commitments and that the obligations of the vendor under the terms and conditions of the contract are fulfilled.

CONTRACTOR - Any person or business having a contract with the College.

CONTRACT MODIFICATION - Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, and reinstatements.

COST ANALYSIS - An evaluation of the various cost elements (i.e. overhead, labor, materials, profit, transportation, etc.) which make-up the total price.

CURE NOTICE - A notice either oral or in writing that informs the vendor that he or she is in default and states what the vendor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

DAY - A calendar day unless otherwise designated.

DEBARMENT - An action taken by the State to exclude individuals or vendors from contracting with a public body for particular goods or services for specified periods of time.

DEFAULT - Failure of a contractor to comply with the terms and conditions of a contract.

DESIGN-BUILD CONTRACT - A contract between an institution and another party in which the party contracting with the College agrees to both design and build the structure, roadway or other item specified in the contract. The term includes both sequential design and construction and phased design and construction methodologies.

DETERMINATION - A written procurement decision made by a public official or employee which is based upon written findings.

EMERGENCY - A sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or to mitigate serious damage to public health, safety, or welfare.

ENERGY PERFORMANCE CONTRACT - An agreement for the provision of energy service, including electricity, heating, ventilation, cooling, steam, or hot water, in which a person agrees to design, install, finance through direct vendor financing and not by way of a municipal lease, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings.

ENGINEERING SERVICES

1. Engineering services are professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment, and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences.

2. Engineering services include consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services.

3. Engineering services do not include:

a. the inspection of construction not requiring engineering training.

b. services provided in connection with an energy performance contract.

EQUIVALENT ITEM - An item of equipment, material, or supply for which the quality, design, and/or performance characteristics are fully equal or superior to an item specified

in a solicitation. The Procurement Officer is the final judge as to equality.

EVALUATED BID PRICE - The dollar amount of a bid after bid price adjustments are made under objectively measurable criteria.

EVALUATION OF BIDS - The process of examining a bid after opening to determine the bidder's responsiveness to requirements, responsibility, and other characteristics of the bid relating to selection for award.

EXTENSION - As applied to contracts for the performance of architect/engineer services, a change in the scope of the services to be performed by the architect/engineer by including in the contract a requirement for the performance of phases of services not previously included.

FIXED PRICE CONTRACT - A contract which provides for a vendor price under which a vendor bears the full risk for profit or loss.

FUND AVAILABILITY - Monies that are currently credited to the College and are contained within the proper object of expenditure.

HEARING BOARD - The Maryland State Board of Contract Appeals as identified by these Procurement Policies and Procedures to hear and decide appeals of protests and contract claims.

INSPECTION - Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

INVITATION FOR BIDS - Any documents, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and simplified procurement procedures.

INVOICE - A contractor's written request for payment for supplies, commodities, services, maintenance, construction, construction-related services, architectural services, or engineering services performed or provided.

LATE BID OR PROPOSAL - A bid or proposal which is received at the place designated in the invitation for bids or request for proposals after the deadline established by the solicitation.

LATENT DEFECT - A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specified materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

LEASE - A contract under which the College uses personal property to which it does not have title. Lease does not include lease-purchase or similar financing transactions. These

Procurement Policies and Procedures do not apply to leases if real property.

LIQUIDATED DAMAGES - A monetary amount provided for in a solicitation or a contract to be paid by the contractor as damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency and not calculated simply to impose a penalty on the vendor.

MAINTENANCE - Any work necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, including built-in equipment or an in-ground system, that is not included within the definition of construction.

MINOR IRREGULARITY - A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not materially affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured.

MINORITY BUSINESS ENTERPRISE - Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.

MINORITY PERSON - A member of a socially or economically disadvantaged minority group, which for purposes of this title includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

MOST ADVANTAGEOUS - A proposal or offer received from a vendor that is determined to be most beneficial to the College considering price and evaluation criteria set forth in the solicitation.

MOST FAVORABLE - A bid received from a vendor that is the lowest bid price or lowest evaluated bid price or the bid or evaluated bid that yields the greatest revenue under a revenue-producing procurement contract.

MULTIPLE AWARD - The award of contracts to more than one vendor when the terms and conditions of solicitation so provide.

MULTI-STEP SEALED BID - A multiple phase process in which bidders submit without price technical offers or samples, or both, to be evaluated by the College and an independent phase in which those bidders whose technical offers or samples, or both have been found to be acceptable have their price bids considered.

MULTI-YEAR CONTRACT - A contract that requires appropriations for more than 1 fiscal year.

NEGOTIATION - A bargaining process between two or more parties to reach a mutually satisfactory agreement, contract or settlement.

NON-COMPETITIVE NEGOTIATION - The process of arriving at an agreement through discussion and compromise with only one source.

NOTICE OF AWARD - A notification that a contract has been awarded.

NOTICE OF INTENT TO AWARD - A written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

OBJECTIVELY MEASURABLE CRITERIA - Standards, absent matters of opinion or subjective judgment, to compare the economy, effectiveness, or value of the subject of the solicitation and includes reliability, operational costs, maintainability, useful life, and residual value.

OPTION - The unilateral right of the College under a contract to extend the contract for an additional period of time, or to purchase delineated additional goods or labor, or to purchase materials or facilities that have been leased.

ORAL BIDS - Bids which are proposed by a means other than by writing.

PAYMENT BOND - A bond required of a vendor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract. Acceptable forms are those as found under Appendix E, BID SECURITY.

PERFORMANCE BOND - A contract of guarantee executed in a predetermined amount subsequent to award to a contractor to protect the College from loss due to contractor's inability to complete the contract in accordance with its terms and conditions.

Acceptable forms include all those found under Appendix E, "Bid Security" and the grant of a mortgage or deed of trust on real property located within the State of Maryland when:

1. Satisfactory to the Procurement Officer;
2. The face amount of the instrument does not exceed 75% of the contractor's equity interest in the property and;
3. the assignment of the mortgage or deed of trust is recorded in the county land records pursuant to Real Property Article, Sec 3-103, Annotated Code of Maryland.

PERFORMANCE SPECIFICATION - Sets forth performance requirements that have been determined essential for the item or service being procured.

PERSON - Any individual, or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

PERSONAL SERVICE CONTRACT - A consulting or other service contract between the College and 1) an individual or 2) a business entity or partnership where the individual performing the work under the contract is the sole or a majority owner.

PREBID OR PREPROPOSAL CONFERENCE - A meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical requirements, specifications, and standards relative to the proposed procurement.

PRE-QUALIFICATION - A procedure to pre-qualify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been pre-qualified.

1. Qualified Products List (QPL): A list of products that have been tested and approved based on written pre-qualification procedures.

2. Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written pre-qualification procedures.

PRICE ANALYSIS - An examination of a vendor's price by comparison to other prices for like goods or services or comparison to other price benchmarks.

PROCUREMENT - All functions that pertain to the process of buying, leasing as lessee, purchasing, or otherwise obtaining any supplies, services, construction, architectural services, engineering services, or services provided under an energy performance contract, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

PROCUREMENT AGENCY - Any principal department or independent unit of the Executive Branch of the State, not otherwise exempted from application of this title, that is authorized by law or regulations to procure.

PROCUREMENT CONTRACT - An agreement in any form entered into by a unit for procurement.

PROCUREMENT OFFICER - Any person authorized by a procurement agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

PROPOSAL - The response to a request for proposals issued by a procurement agency to obtain goods or services.

PROPOSER - A person who submits a response to a request for proposals.

PROTEST - A complaint relating to the solicitation or award of a procurement contract.

PUBLIC BID OPENING - The process of publicly opening and reading bids.

PURCHASE - The act of buying or that which has been bought.

PURCHASE ORDER (PO) - A document issued by the College authorizing a procurement from a vendor. If issued in acceptance of a bid or proposal, the document is an "acceptance" and forms a contract upon issuance. If issued not in acceptance of a bid or proposal, a contract is formed upon acceptance by the vendor. Acceptance is evidenced by any reasonable manner in light of the circumstances including prompt shipment or prompt promise to ship or a definite expression or written confirmation sent by the vendor within a reasonable time.

QUOTATION - A bid.

REQUEST FOR BIDS - Invitation for bids.

REQUEST FOR PROPOSALS - Any document, whether attached or incorporated by reference, used for soliciting proposals from offerors under any method allowed under this title excluding competitive sealed bidding and comparable small procurement methods.

REQUEST FOR QUOTATION - Invitation for bids.

REQUIREMENTS CONTRACT - A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

RESEARCH GRANT - Funding from an external entity, either governmental or non-governmental, for a specific scope of work to be conducted in accordance within an approved budget and defined period of performance. Funding is made partially (if not entirely) on the qualifications of key personnel, including prospective sub-awardees. The award document is legally binding. A grant as defined here is not a contract for purposes of this document.

RESPONSIBLE - A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance.

RESPONSIVE - A bid submitted in response to an invitation for bids that conforms in all material respects to the requirements contained in the invitation for bids.

SERVICE CONTRACT - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.

SERVICES - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but

is not limited to, the professional, personal, and/or contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, appraisers, land surveyors, and where the service is associated with the provision of expertise or labor, or both.

SOLE SOURCE - When a competitive source selection method cannot be used because a product or service is practicably available only from one source.

SOLICITATION - Invitation for bids, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a procurement agency's procurement needs.

SUPPLIES - All tangible personal property, including equipment, leases of equipment, insurance, including necessarily associated services, and printing.

SUBSTITUTION- An item of equipment, material, or supply for which the quality, design, and/or performance characteristics are less than fully equal to an item specified in a solicitation. Procurement Officer is the final judge as to equality.

TECHNICAL PROPOSAL - A proposal, not including price, which sets forth in detail that which a vendor proposes to furnish in response to a request for proposals.

TERMINATION FOR CONVENIENCE - The termination by a Procurement Officer, at his/her discretion, of the performance of work in whole or in part and makes settlement of the vendor's claims in accordance with appropriate policy and procedures.

TERMINATION FOR DEFAULT - Action taken by the Procurement Officer to order a vendor to cease work under the contract, in whole or in part, because of the vendor's failure to perform in accordance with the contract's terms and conditions.

TERMS AND CONDITIONS - Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from laws or administrative procedures.

TIME AND MATERIAL CONTRACT - A contract providing for the procurement of materials at an agreed price or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit).

TREASURER - The Treasurer of the State of Maryland.

UNSEALED BID - An unsealed written offer conveyed by letter, telegraph or other means.

VENDOR - A person or business who desires to enter into a contract with the State.

PRESIDENT OR DESIGNEE - The President or Designee or his/her designee.

VOUCHER - A claim for reimbursement of funds resulting from an expenditure related to

official State business.

APPENDIX A
STANDARD TERMS AND CONDITIONS FOR SOLICITATIONS

A 1.0 Simplified Procurement Requirements (Procurement Contracts under \$50,000).

A 1.1 Mandatory Solicitation Requirements for Procurements under \$50,000

Content of Solicitations: When a solicitation is being advertised by BCCC's Procurement Policies, then the invitation for bids (IFB) or request for proposals (RFP) shall include the minimum of the following:

- A 1.1.1 A description of the items requested.
- A 1.1.2 Time, date, place, and form of response requested.
- A 1.1.3 The basis for evaluation and award.
- A 1.1.4 The name and telephone number of the Procurement Officer to whom inquiries regarding the solicitation may be directed.
- A 1.1.5 Whether electronic transactions are permitted or required as specified in Section 3 of the BCCC's Procurement Policies.

A 1.2 Mandatory Contract Requirements for Procurements under \$50,000

A 1.2.1 Simplified Acquisitions of \$5,000 or less:

A 1.2.1.1 Contracts under \$5,000 (oral or written)

A 1.2.1.2 Minimum evidence:

- 1) For oral contracts-a receipt, invoice, or voucher;
- 2) For written contracts-a purchase order or contract;
- 3) For purchases made with a corporate purchasing card, a charge slip or a telephone purchasing card log, and at least a sales slip, packing slip, cash register receipt, or repair order.

A 1.2.2 Simplified Procurements equal to or over \$5,000 but less than \$50,000:

Simplified procurements equal to or over \$5,000 but less than \$50,000 must be written, and signed by authorized College employees in accordance with these Procurement Policies. In addition, the contract must include the following terms and

conditions. If unusual circumstances arise that necessitate the modification of any mandatory terms and conditions, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, as appropriate, by legal counsel.

- A I.2.2.1 Identification of the parties to the contract including legal name, address, State of incorporation or formation, contractor taxpayer identification number; the taxpayer identification number shall be the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations.
- A I.2.2.2 A statement of the scope of the contract.
- A I.2.2.3 The dollar value of the contract, if known, or estimated dollar value if the actual value is not known and invoicing procedures.
- A I.2.2.4 The term of the contract, including completion or delivery date.
- A I.2.2.5 Name of the Procurement Officer responsible for the contract.
- A I.2.2.6 Insurance requirements as appropriate for the procurement contract as determined by the Procurement Officer;
- A I.2.2.7 Bond/security requirements as appropriate for the procurement contract as determined by the Procurement Officer; and
- A I.2.2.8 Contract affidavit required for procurements valued equal to or exceeding \$25,000 but less than \$50,000 in accordance with Appendix D.
- A I.2.2.9 Mandatory Contract Provisions: All purchase orders and written contracts equal to or over \$5,000 but less than \$50,000 shall use the following:
 - 1. Purchase Orders: Use the Mandatory Contract Provisions as provided in Appendix B1.
 - 2. Written contracts not documented by purchase order: Use the Mandatory Contract Provisions as provided in Appendix B2.
 - 3. Construction contracts: Use both the

Mandatory Contract Provisions provided in Appendix B2 and the Mandatory Construction Provisions as provided in Appendix C.

- A 2.0 Procurement Requirements for Contracts equal to or exceeding \$50,000:
 - A 2.1 Mandatory Solicitation Requirements for Procurements equal to or exceeding \$50,000:
 - A 2.1.1 Instructions and information to vendors concerning the solicitation requirements, including the time and date set for receipt of the responses and the address where responses are to be delivered.
 - A 2.1.2 The purchase description, delivery or performance schedule, and any special instructions necessary.
 - A 2.1.3 A description of the procurement method (Competitive Sealed Bids, Competitive Sealed Proposals, or other approved method in accordance with Section 4 of the Procurement Policies). The basis of award shall also be defined. For procurements that require evaluation of technical and financial proposals in the selection process, measurable evaluation criteria to be used shall be set forth in the solicitation. The solicitation shall state whether the award shall be made on the basis of most favorable price or most favorable evaluated price, or best value, whichever is applicable.
 - A 2.1.4 The name and telephone number of the Procurement Officer to whom inquiries regarding the solicitation may be directed.
 - A 2.1.5 Acknowledgment of Addenda. The solicitation shall require vendors to acknowledge receipt of all changes to the solicitation issued by the College.
 - A2.1.6 Public Information Act Notice. A public information act notice is a mandatory provision for all solicitations. The following notice is preferred:

"Bidders/Proposers should give specific attention to the identification of those particular portions of their bids/proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State of Maryland under the Access to Public Records

Act, State Government Article, Title I 0, Subtitle 6, Annotated Code of Maryland."

A2.1.7 At the discretion of the Procurement Officer, a Maryland Economic Benefit Evaluation Factor may be applied. Its weight relative to the other technical evaluation factors shall be set forth in the RFP. Examples of the Maryland Economic Benefit elements may be provided in the RFP, but other benefits directly or indirectly attributable to the Maryland economy offered in a vendor's proposal may also be considered.

A2.1.8 Minority Business Enterprise Notice. A minority business enterprise notification is a mandatory provision for all solicitations as follows:

"Minority business enterprises are encouraged to respond to this solicitation".

A 2.1.9 Arrearages. An arrearages clause is a mandatory provision for all solicitations. The language may be varied but shall contain the following information:

"By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award."

A2.1.10 Bid/Proposal Affidavit. Each solicitation shall provide notice that a Bid/Proposal Affidavit, in the form provided in Appendix D, shall be completed and submitted to the Procurement Officer with the Bid/Proposal.

A2.2 Mandatory Contract Requirements for Procurements equal to or exceeding \$50,000:

Purchase orders and written contracts equal to or exceeding \$50,000 must include the following elements:

A 2.2.1 Identification of the parties to the contract including legal name, address, State of incorporation or formation, contractor taxpayer identification number; the taxpayer identification number shall be the Social Security number for individuals and

sole proprietors and the federal employer identification number for all other types of organizations;

A 2.2.2 A statement of the scope of the contract;

A 2.2.3 The dollar value of the contract, if known, or estimated dollar value if the actual value is not known;

A 2.2.4 The term of the contract, including completion or delivery date;

A 2.2.5 Name of the Procurement Officer responsible for the contract;

A 2.2.6 Insurance requirements as appropriate for the procurement contract as determined by the Procurement Officer;

A 2.2.7 Bond/security requirements as appropriate for the procurement contract as determined by the Procurement Officer; and

A 2.2.8 Contract Affidavit in accordance with Appendix D.

A 2.2.9 Whether electronic transactions are permitted or required as outlined in Section 3 of the Procurement Policies.

A 2.2. 10 Mandatory Contract Provisions: All purchase orders and written contracts equal to or exceeding \$50,000 shall include mandatory terms and conditions as provided below. If unusual circumstances arise that necessitate the modification of any mandatory terms and conditions, a recommendation containing the necessary modification (s) and including written justification must be approved by the Procurement Officer and, as appropriate, by legal counsel.

- 1) Purchase Orders: Use the Mandatory Contract Provisions as provided in Appendix B3.
- 2) Written contracts not documented by purchase order: Use the Mandatory Contract Provisions as provided in Appendix B4.
- 3) Construction contracts: Use both the Mandatory Contract Provisions Conditions as provided in Appendix B4 and the Mandatory Construction Provisions as provided in Appendix C.

A 3.0 Bonding/Security

- A 3.1 A bid bond, performance bond, or a payment bond may be required in a solicitation. A bid bond, when specified, must accompany the bid. Performance bonds and payment bonds, if requested, must be filed in accordance with the direction of the Procurement Officer.
- A 3.2 A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If approved by legal counsel, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security offered affords protection to the College equivalent to a corporate surety bond.
- A 3.3 If a performance bond requirement is not stated in the solicitation and the College later determines that a bond should be provided prior to the award of a contract, the contractor to whom the award will be made shall provide a performance bond, and the College will pay the cost of the bond.
- A 3.4 If unusual circumstances arise that necessitate the modification of the form and/or wording of the Bond, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, as appropriate, by legal counsel.
- A 3.5 Bid/Proposal Security.
- A 3.5.1 Solicitations for construction contracts reasonably expected by the Procurement Officer to exceed \$100,000 shall contain notice of bid security requirements.
- A 3.5.2 Solicitations for all other contracts reasonably expected by the Procurement Officer to exceed \$100,000 and for which the Procurement Officer wishes to require bid security shall contain notice of the bid security requirements.
- A 3.5.3 Notwithstanding paragraphs A 3.5.1 and A 3.5.2 above, notice of bid security is required if a federal law or a condition of federal assistance for the contract requires it.

A 3.6 For all construction contracts equal to or exceeding \$100,000, a performance bond is required and shall be in the form provided in Appendix E.

A 3.7 Acceptable forms for Bid, Performance, and Payment Bonds are provided in Appendix E.

A 4.0 Insurance

A 4.1 The Contractor shall defend, indemnify, and save harmless the State of Maryland and Baltimore City Community College, their officers, employees and agents, from any and all claims, liability, losses and causes of actions which arise out of the performance by the Contractor, its employees or agents, of the work covered by this Contract.

A 4.2 The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised. The following type(s) of insurance and minimum amount(s) of coverage are required if applicable to the procurement:

A 4.2.1 Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.

A 4.2.2 Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.

A 4.2.3 Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the College should be added as a "loss payee."

A 4.2.4 Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other

information concerning the State's claimants or employers is processed or stored.

A 4.2.5 Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.

A 4.2.6 Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

A 4.2.7 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

A 4.2.8 Owner's Landlord's and Tenant's and Contractor's bodily injury liability insurance, with limits of not less than \$500,000 for each person and \$2,000,000 for each accident.

A 4.2.9 Food products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

A 4.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

A 4.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

A 4.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in the solicitation within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

A 4.6 Subcontractor Insurance

A 4.6.1 The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

A 4.7 All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland and acceptable to the College. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class V" or better in the latest edition of Best's Insurance Reports.

APPENDIX B

MANDATORY CONTRACT PROVISIONS

Appendix B1: Small Procurements – Equal to or Exceeds \$5,000 but less than \$50,000

Appendix B2: Purchase Orders – Equal to or Exceeds \$50,000

Appendix B3: Written Contracts – Equal to or Exceeds \$50,000

APPENDIX B1

MANDATORY CONTRACT PROVISIONS FOR SMALL PROCUREMENTS

The provisions outlined below are mandatory provisions for all purchase orders and / or written contracts that are equal to or exceed \$5,000 but less than \$50,000:

1. **Incorporation by Reference.** All terms and conditions of the solicitation and any amendments thereto, are made part of this contract.
2. **Tax Exemption.** The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.
3. **Specifications.** All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation.
4. **New Materials.** All items shipped pursuant to this Purchase Order shall be new, never previously used, and the current model of the item unless specifically stated otherwise in this contract.
5. **Delivery and Acceptance.** Delivery shall be made in accordance with the solicitation specifications. The College, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The College unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The College reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.
6. **Non-Discrimination in Employment.** The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law.
7. **Anti-Bribery.** The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, or partners; nor any employee of the Contractor who is directly involved in obtaining contracts with the State or with any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.

8. **Registration.** Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the Maryland Department of Assessments and Taxation (<https://dat.maryland.gov/Pages/default.aspx>) before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.
9. **E.P.A. Compliance.** Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.
10. **Occupational Safety and Health Act (O.S.H.A.).** All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U. S. and Maryland Occupational Safety and Health Act standards.
11. **Indemnification.** The State shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.
12. **Disputes.** Disputes arising under this Contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland, and by COMAR 21.10. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer.
13. **Termination for Convenience.** The College may terminate this Contract, in whole or in part, without showing cause upon prior written notification to the Contractor specifying the extent and the effective date of the termination. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12(A)(2).
14. **Termination for Default.** If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the State may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the State. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.
15. **Termination for Nonappropriation.** If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall be terminated automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

16. **Maryland Law Prevails.** The law of Maryland shall govern the interpretation and enforcement of this Contract. Contractors Invoices Contractor agrees to include on the face of all invoices billed to the State, its Taxpayer Identification Number which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations.
17. **Changes.** This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract (including the Contract price).
18. **New Materials.** All items shipped pursuant to this Purchase Order shall be new, never previously used and the current model of the item unless specifically stated otherwise in this contract.

The Contractor shall comply with the provisions of State Finance and Procurement Article, Title 19, Annotated Code of Maryland.

APPENDIX B2:

Purchase Orders – Equal to or Exceeding \$50,000

The following are mandatory terms and conditions to be included in all purchase orders exceeding \$50,000.

1. **Incorporation by Reference.** All terms and conditions of the solicitation, and any amendments thereto, are made a part of this contract.
2. **Tax Exemption.** The College, a state-owned agency, is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.
3. **Specifications.** All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation.
4. **Delivery and Acceptance.** Delivery shall be made in accordance with the solicitation specifications. The State, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The College unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The College reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The College reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.
5. **Non-Hiring of Officials and Employees.** No official or employee of the State, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract shall, during the pendency or term of this contract and while serving as an official or employee of the State, become or be an employee of the contractor or any entity that is a subcontractor on this contract.
6. **Nondiscrimination in Employment.** The Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability of a qualified individual with a disability and to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

7. **Financial Disclosure.** The Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland. That section requires a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.
8. **Political Contribution Disclosure.** The Contractor shall comply with the political contribution reporting requirements to which the contractor may be subject under Election Law Article, Title 14, Annotated Code of Maryland. That title includes requirements for persons making or having a single contract with a single governmental entity involving cumulative consideration of at least \$200,000 to file certain statements with the State Board of Elections both before the execution of such contracts by that governmental entity and periodically thereafter; and further requires the governmental entity to require such persons to certify that they have filed such statements. Additional information is available on the State Board of Elections website.
9. **Anti-Bribery.** The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.
10. **Registration.** Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.
11. **Contingent Fees.** The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.
12. **EPA Compliance.** Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.
13. **Occupational Safety and Health Act (O.S.H.A).** All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U. S. and Maryland Occupational Safety and Health Act standards.

14. **Termination for Convenience.** Upon written notice to the Contractor, the State may terminate this contract, in whole or in part, whenever the State shall determine that such termination is in the best interest of the State. The State shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the Contractor may not be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).
15. **Termination for Default.** When the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the State. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.
16. **Disputes.** This contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.
17. **Multi-Year Contracts.** If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this contract shall terminate automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.
18. **Intellectual Property.** Contractor agrees to indemnify and save harmless the State, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this contract.
19. **Maryland Law Prevails.** The provisions of this contract shall be governed by the laws of Maryland.
20. **Contractor's Invoices.** Contractor agrees to include on the face of all invoices billed to the College, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations.
21. **Indemnification.** The College representing agency of the State of Maryland shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.
22. **Conflicting Terms.** Any proposal for terms in addition to or different from those set forth

in this purchase order or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

23. Drug and Alcohol Free Workplace. The contractor warrants that the contractor shall comply with COMAR 21.11.08, and that the contractor shall remain in compliance throughout the term of this purchase order.

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

Furthermore, as a condition of entering into this Agreement (if applicable), upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**APPENDIX B3:
WRITTEN CONTRACTS – EQUAL TO OR EXCEEDS \$50,000**

The following are mandatory terms and conditions are required for all written contracts equal to or exceeding \$50,000.

1. Scope of Work

(a) The Contractor shall provide the services described in the Contractor’s Proposal. These services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

(b) The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor shall assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2. Term of Agreement

Performance under this Agreement commences on Start date and continues until [end date].

3. Compensation and Payment

(a) The consideration to be paid the Contractor for services provided is listed in the Contractor’s proposal in the amount of _____. Each invoice for services rendered must include the Contractor’s Federal Tax Identification Number, business address of Contractor, Contract Number (enter contract number), invoice number and date. Invoices should be emailed to: Baltimore City Community College, Accounts Payable, AccountsPayableDept@bccc.edu. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited.

In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4. Payment of State Obligations

Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or

(2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

5. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

6. Disputes

a) This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

b) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

- c) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
- d) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.
- e) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.
- f) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
- g) The procurement officer shall render a written decision on all claims within 180 days of receipt of the contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.
- h) The procurement officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.
- i) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

7. Termination for Convenience

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

8. Termination for Default

If Contractor fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, College may terminate the Agreement by written notice to Contractor. The notice must specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by Contractor shall, at the College's option, become the College's property. The College shall pay Contractor fair and

equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to Contractor, Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by COMAR 21.07.01.11B.

9. Cost and Price Certification

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

(2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

10. Suspension of Work

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the College.

11. Contingent Fee Prohibition

The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

12. Document Retention and Inspection Clause

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the College hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the College, including the procurement officer or designee, at all reasonable times.

13. Compliance with Laws

The Contractor hereby represents and warrants that:

- a) It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

- b) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

- c) It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

14. Non-Hiring of Officials and Employees

No official or employee of the State of Maryland, as defined under General Provisions Article, § 5-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

15. Non-Discrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

16. Financial Disclosure

The Contractor shall comply with the provisions of State Finance and Procurement Article § 13-221, Annotated Code of Maryland. That section requires a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

17. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

18. Pre-Existing Regulations

In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

19. Contract Modification

Except as provided in section 1(b) above, this Agreement may be amended only as BCCC and Contractor mutually agree in writing. Every Contract modification or change order affecting Contract price is subject to prior written approval by the Procurement officer and any other appropriate authorities and to prior certification by the appropriate fiscal authority as to the availability of funds and the effect of the modification or change order on the project budget or the total construction costs; and if the certification discloses that a Contract modification or change order will increase the cost beyond budgeted and available funds, the Procurement officer may not make the modifications or change order unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

20. Multi-Year Contracts Contingent Upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the College from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The College shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of the Contract for each succeeding fiscal period beyond the first.

21. Commercial Nondiscrimination

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

b) As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

22. Occupational Safety and Health Act (OSHA)

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

23. EPA Compliance

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

24. Delivery and Acceptance

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

25. Conflict of Interest

Contractor shall disclose to the Procurement officer any actual or perceived conflict of interest as it arises in accordance with COMAR 21.05.08.08.

26. Indemnification

a) The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorney's fees and disbursements of any character that may arise from, are in the connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

b) This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's

employees.

- c) The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- d) The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- e) The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- f) This Section shall survive termination of this Contract.

27. Non-Assignment

The Contractor shall not sell, transfer, or otherwise assign its obligation under this Contract or any portion thereof, or any of its rights, title, or interest therein, without the prior written consent of the College. When it is in the best interest of the State, a successor in interest may be recognized as provided by COMAR 21.05.02.24.

28. Alteration of Terms

Any proposal for terms in addition to or different from those set forth in this Contract or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor, without the additional or different terms. If this Contract is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this Contract may not be waived.

29. Patents, Copyright, and Intellectual Property

- a) If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

- b) The Contractor will defend or settle, at its own expense, any claim, or suit against the State if a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright. The Contractor will defend the State against that claim at the Contractor's expense and will pay all damages, costs and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section c below.
- c) If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its opinion and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

30. Drug and Alcohol Free Workplace

The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this Contract.

31. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, Baltimore City Community College may withhold payment of any invoice or retainage. The college may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

32. Insurance Requirements

The Contractor shall maintain insurance sufficient to protect the interest of the State of Maryland as designated by the Comptroller of the State of Maryland. The College shall be named as an additional named insured on all liability policies (Workers' Compensation excepted) and certificates of insurance evidencing this coverage shall be provided prior to the commencement of the contract.

33. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

34. Prompt Payment Requirements

If a Contractor withholds payment of an undisputed amount to its subcontractor, the College, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

An “undisputed amount” means an amount owed by a Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation, (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

An act, failure to act, or decision of the Procurement Officer or a representative of the College, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:

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

The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program (“MBE”).

To ensure compliance with certified MBE subcontract participation goals, the College may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- (c) If the College determines that a Contractor is in noncompliance with certified MBE participation goals, then the College will notify the Contractor in writing of its findings and will require the Contractor to take appropriate corrective action.
 - i. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(d) If the College determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the College may:

- i. Terminate the contract;
- ii. Refer the matter to the Office of the Attorney General for appropriate action; or
- iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

(e) Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

35. Maryland Law

The place of performance of this Contract shall be the State of Maryland. This Agreement must be construed, interpreted, and enforced according to the laws of the State of Maryland.

36. Contract Affidavit

All terms and conditions of the Contract Affidavit, attached as Exhibit A are made a part of this contract.

APPENDIX C
MANDATORY CONSTRUCTIONS PROVISIONS

Application.

This Appendix C provides mandatory construction contract clauses to be included in all construction contracts.

In addition to the clauses required by this Appendix C, each construction contract shall include the mandatory contract clauses required by SMCM Procurement Policies and Procedures (Appendices A and B2). In the event that any requirements in Appendix C contradict requirements provided in Appendix B2, then Appendix C shall have precedence.

If unusual circumstances arise that necessitate the modification of any mandatory contract clauses, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, if appropriate, by legal counsel.

Mandatory Construction Terms and Conditions

1. Differing Site Conditions

- A. The Contractor shall immediately, and before such conditions are further disturbed, notify the Procurement Officer orally, and followed within 3 days in writing, of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Procurement Officer, or designee, shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in Paragraph IA above provided, however, the time for notice prescribed therefore may be extended by the Procurement Officer in writing.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

2. Site Investigation

The Contractor acknowledges that he has investigated and satisfied himself as to the

conditions affecting the work, including but not limited to those bearing upon transportation, disposal, handling and storage of materials, availability of labor,

water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of materials, equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials, which shall include the presence of lead or other substances classified by EPA as hazardous materials or controlled substances and the requirements for their removal and disposal, or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the College, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost or time of successfully performing the work. The College assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the College.

3. Changes in the Work

A. Except as herein provided, no order, statement, action, inaction, or conduct of the Procurement Officer or any College representative or agent, shall be treated as a contract modification or entitle the Contractor to an adjustment in the contract price, time or quality.

B. The Procurement Officer or its authorized representative may unilaterally, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the College-furnished facilities, equipment, materials, services or site;
or
- (4) In directing acceleration or suspension in the performance of the work.

C. Change Directives:

(1) The College may direct the Contractor to add or reduce services prior to issuance of a formal Change Order, through the issuance of a written Change Directive signed by the designees identified in the chart below. A Change Directive is used when time is of the essence. A Change Directive does not modify the Contract.

(2) When all necessary approvals are obtained, the College will issue a Change

Order to the Contract associated with a duly authorized Change Directive within a reasonable time period, provided the Contractor fulfills all its obligations in providing complete information as may be required per this Changes in the Work clause. Under certain conditions, the College must obtain approval from the Maryland State Board of Public Works prior to issuance of a Change Order. Authorized Change Orders to this Contract will be conveyed to the Contractor by the Purchasing Agent of the College. Services completed under a Change Directive to this Contract may not be invoiced by the Contractor until issuance of the actual Change Order and shall not be payable before that time.

- D. When changes in the work require modification of the contract price and/or time, such modification shall be accomplished using the following procedures:
- (1) When unit prices are stated in the Contract or have been subsequently agreed upon, the change in contract price shall be based on the unit prices as applied to the quantity of work approved by the Project Manager.
 - (2) When unit prices are not applicable, then the modification of the contract price shall be a lump sum price agreed upon by both the Procurement Officer and Contractor.

The Contractor shall promptly submit to the Procurement Officer with a copy to the Project Manager and Architect a Change Proposal which includes a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.

For all changes in the work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by the College or its representatives or the Architect, proposals from Suppliers or other supporting data required to substantiate costs shall be furnished.

- (a) Modification of the Contract as to price shall be proposed as follows:
 - (i) If the change involves only a credit, as to the College, the contract price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor will be allowed to retain a sum not in excess of three percent (3%) for handling.

- (ii) If the change involves both a credit and a debit, both sums shall be shown on the change proposal and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.
- (iii) Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be 15% based upon the monetary value of the work.
- (iv) For work performed by a Subcontractor with his own forces, the percentages for combined overhead and profit for a Subcontractor will be 15% based upon the monetary value of the work. On work partly or solely performed by a Subcontractor, the Contractor will be allowed five percent (5%) of the total cost of the Subcontractor's labor, materials overhead and profit, including taxes and insurance on labor required by statute.
- (v) For labor costs, unless otherwise specified, the Contractor will be reimbursed for his normal usual rates to include direct hourly rates and his expenditures for Worker's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged in the work and the actual increased cost of bonds.
- (vi) The cost of foremen and superintendents may be added only when the Procurement Officer determines it was necessary for the Contractor to hire additional supervisory personnel or makes the Contractor's employment for time additional to that required by the basic contract.
- (vii) The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the College and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.
- (viii) The allowable percentages of cost for overhead and profit are deemed to include any and all such costs, but not limited to, job supervision and field office expense required by the Contract; expenses for timekeepers; clerks and watchmen; cost of

correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools; and cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location; and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly established principal office, branch office or similar facilities.

- (ix) Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.
 - (x) No profit or overhead which includes rental of equipment and the salaries of supervisory personnel will be allowed the Contractor for stoppage of work when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to prevent such stoppage.
- (3) Request for Time Extension: If the Contractor contends that any Change Order, potential Change Order, Change Directive, proposal for a Change Order or other order issued under this Changes in the Work clause will or may cause an increase in the time required for performance, or damages, additional overhead, or costs to the Contractor or his Subcontractor or Supplier at any tier, the Contractor must include the specific additional time, if any, and compensation claimed to be due in the Contractor's change order proposal.

In the event that the Contractor seeks an adjustment in contract time as a result of delays, suspensions or for any other reasons, he shall submit a written request for time extension to the Procurement Officer within 15 days of the Contractor's knowledge of the event or the resolution of the event, whichever is later. Failure to timely submit the request shall constitute a waiver of claim as to all matters related thereto. The written request for time extension shall be in addition to any notice(s) of delay as may be required in the Contract.

The Contractor is entitled to no additional costs or extensions of the completion time or damages for which he has failed to file a timely notice, or the request for time extension itself, in the proper form and supported by complete and proper documentation, as required by this Changes in the Work clause and Sections 7.02 and 7.03 and all other applicable provisions of the Contract.

The request for time extension shall include:

- (a) A justification as to the circumstances and cause of the work, delay or other event that is the basis for the request for additional time. The Contractor shall also provide specific reference to the section of the General Conditions for which his request is based;
- (b) A reasonably detailed description of the effect of the event on the adjusted as-planned/as-built critical path;
- (c) A specific proposed number of days to be added/deducted to the contract time based on the information provided above;
- (d) Copy of his timely notice of delay, if any; and
- (e) Any other documentation required to support the request for time extension.

The burden is on the Contractor to substantiate the merits of any request for time extension. Upon receipt of a written request for time extension, the Procurement Officer may require any supplemental information reasonably required to ascertain the facts and to make a determination. The mere existence of a change order or other event does not entitle the Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. The Contractor's entitlement thereto shall be subject to the requirements of the Contract Time and Delays clauses of the Contract. A change order granting a time extension may provide (a) that the contract completion date will be extended only for specific critical activities, (b) that the remaining contract completion date(s) for all other portions of the work will not be altered, and/or (c) for an equitable adjustment of liquidated damages under the new required completion dates.

- (4) If the College and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work shall be done on the basis of a Force Account in accordance with the Contract. Under these conditions, the College shall have the right to issue a Change Directive for the work to be performed and the Contractor shall promptly proceed as directed.
- (5) (a) If the Contractor and the Procurement Officer cannot agree as to the scope or price for any proposed change, then the Contractor shall submit a Claim under the Disputes Clause.

- (b) If the Contractor and the Procurement Officer cannot agree as to the extent the Contract time shall be modified, then the Contractor shall submit a Claim under the Disputes Clause.
- E. (1) If the Contractor believes that a written or oral order, direction, instruction, interpretation or determination issued by a College representative or agent, or some other material change in the terms or conditions stipulated under the Contract (defined here to be a Potential Change Order), causes an increase in the Contractor's cost of, or time required for, the performance of any part of the work under this Contract, the Contractor must take the following action:
 - (a) The Contractor must, while continuing the Work, provide written notice to the Procurement Officer, and simultaneously send a copy to the Purchasing Agent, that such written or oral order, direction, instruction, interpretation or determination or other material change in the terms or conditions stipulated under the Contract is regarded by the Contractor as a Potential Change Order, within 14 days of the written or oral order, and
 - (b) the Contractor must then follow the procedure for modification of the contract time and or price as is described in paragraph D of the Changes in Work Clause.
- (2) Should the College agree to modify the Contract it will issue a Change Order. If in the judgment of the Procurement Officer, the Potential Change Order does not increase or decrease the Contractor's cost of, or time required for, performance of any part of the work or is not in fact a material change in the terms and conditions stipulated under the Contract he may direct the Contractor to proceed with the work, in writing, with no adjustment in compensation or contract time. If the Contractor and the Procurement Officer cannot resolve to mutual satisfaction whether a Potential Change Order shall result in an adjustment in the Contractor's cost or time for performance, then the Contractor can only seek recourse under the Disputes Clause of this Contract. Failure by the Contractor to provide written notice within the stated time period explicitly stating that the Contractor has encountered a Potential Change Order will result in the Contractor forfeiting any rights to seek compensation or additional time arising from the Potential Change Order.
- (3) Upon receipt of a written order of the Procurement Officer under Section E of this Changes in the Work Clause, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor agrees with the terms of the order. Failure

to comply with the order in a timely manner shall constitute a breach of contract and grounds for termination for default or any other remedy available to the College.

- F. The Architect, with the concurrence of the Project Manager, shall have authority to make minor changes in the work not involving extra cost or additional time, and not inconsistent with the purposes of the project. Otherwise, except in any emergency endangering life or property, no extra work or changes to the work shall be done unless authorized by the College in accordance with the Changes Clause of this Contract prior to any such work or changes to the work being done.

4. Contract Time

- A. All time limits in the Contract are of the essence of the Contract. The deadline for the completion of the work will be that deadline as defined in the written Agreement. No deadline may be extended except by written Change Order issued pursuant to the Changes in the Work Clause.
- B. Contractor and the College agree that the time stated in the Contract for the completion of the work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.
- C. This project is subject to limited funding and tight budgeting. The College's budgeting, including budgeting for expenses of operation after completion and for payment to the Architect and others working on the project, is based on the Contract extending for the full time allowed by the Contract for completion. The College is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the project prior to the completion date stated in the Contract. The College will not be liable for any claims based on the Contractor's assertion of an intention to finish early.
- D. Requests for time extensions must be filed and supported as provided in the Changes in the Work Clause and other applicable provisions of the Contract. Failure of the Contractor to request a time extension as required by the Contract, or provide proper notice as required by the Delays Clause, shall constitute a waiver of Contractor's right to an extension of the required completion date and any damages for delay to which he might be entitled.
- E. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by the College or its representatives shall

constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of the College to pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

- F. An equitable adjustment in contract time or price for delay shall be subject to the requirements and conditions set forth in the Contract.

5. Delays

- A. The term "delay" shall mean any act, omission, occurrence, event, or other factor which necessarily results in the extension of the time reasonably required for completion of the Contract. This Clause covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.

- B. In the event that a delay is excusable as provided in Paragraph D, Excusable Delays, below, or is otherwise not the responsibility of the Contractor, the Contractor must take all reasonable action to avoid and/or mitigate the effects of the delay, including but not limited to:
 - (1) Rescheduling or resequencing the work,
 - (2) Accepting other work, and/or
 - (3) Reassigning personnel.

Such action by the Contractor excludes any action that causes an increase in the Contractor's cost to perform the work unless such costs are authorized or directed by the College in accordance with the Changes in the Work Clause.

- C. In the event that a delay is the responsibility of the Contractor, the Contractor must take action to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to the College. The Contractor does not have the unilateral right to complete the work late and pay liquidated or other damages.

- D. Excusable Delays: The Contractor shall be entitled to an extension of the contract time for delay if all of the conditions listed below in (1) through (6) are met:

- (1) The delay in the completion arises from either:
 - (a) unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the College in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the College, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or Suppliers, or
 - (b) A suspension of the work as provided in paragraph E of this Delays Clause; and
- (2) The Contractor provides the Procurement Officer proper notice per paragraph H of this Delays Clause;
- (3) The delay impacts the critical path identified on the Contractor's schedule per paragraph H of this Delays Clause;
- (4) The Contractor is reasonably unable to mitigate the impact of the delay as required by paragraph B of this Delays Clause;
- (5) The Contractor properly requests an extension of time in accordance with the Changes in the Work Clause and the Contract Time Clause; and
- (6) The Procurement Officer, having ascertained the facts based on information provided by the Contractor as required in the Contract and any other information he may obtain, extends the time for completing the work when, in his judgment, the findings of fact justify such an extension, through a change order. The determination by the Procurement Officer shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.

E. Suspension of the Work:

- (1) The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as it may determine to be appropriate for the convenience of the College.

- (2) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the College in the administration of the Contract, or by its failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the direct jobsite cost of performance of this Contract (in accordance with the Changes in the Work Clause) necessarily caused by an unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent
- (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- (3) No claim under this clause shall be allowed: (1) unless the Contractor provides proper notice and meets all other procedural requirements of the Contract, (2) for any costs incurred more than 10 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order provided under paragraph E(l) of this Delays Clause), (3) unless the Contractor is entitled to an extension of the Contract time per paragraph D of this Delays Clause, and (4) unless the claim, in an amount stated, is asserted in writing within 30 days after the termination of a suspension, delay, or interruption.

F. Damages for Delay:

- (1) Whenever the College shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with the Changes in the Work Clause and this Delays Clause.
- (2) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of Subcontractors and Suppliers at any tier for which the Contractor is liable, subject to the Changes in the Work Clause; (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies; and (c) an additional percentage, determined in accordance with the Changes in the Work Clause of the total of items (a)(i) through (v) above, for overhead and profit.
- (3) No other compensation or damages are recoverable by the Contractor for compensable delays or extensions of the completion time except as expressly stated in this paragraph F of the Delays Clause. In particular, the College will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorney's, accountant's or consultant's fees, costs of claims preparation and presentation, and fees and costs of litigation.
- (4) There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.

G. Delays set forth in paragraph D(1)(a) of this Delays Clause shall not be compensable even if an extension of time is granted.

H. The Contractor shall be entitled to no time extensions, compensation or damages for delay unless:

- (1) the Contractor satisfies all requirements stipulated in the Contract; and
- (2) the Contractor notifies the Procurement Officer in writing, within five (5) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay of:
 - (a) the alleged delay and its anticipated duration, and
 - (b) the act, omission, occurrence, event or other factor allegedly causing the delay.
- (3) Knowledge on the part of the College of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give the College the notice required by this paragraph H of the Delays Clause.

I. Weather:

- (1) Definition of rain days and drying days should be as follows unless otherwise agreed by the Procurement Officer.
 - (a) Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than .10inch.
 - (b) It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). The Procurement Officer may allow additional drying days if deemed reasonable, in his discretion.
- (2) Unusually severe weather - rain.

To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

- (a) Using the last ten (10) years of weather data from the weather station at Patuxent Naval Air Station, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and one standard deviation from the average.
 - (b) Contractor shall then add the average number of weekdays lost to the value of one standard deviation. The sum (the average plus one standard deviation) shall be considered normal for the month in question.
 - (c) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days or drying days for the month to determine the net number of weekdays lost to rain:
 - (i) rainfall occurred on a non-work weekday such as a holiday;
 - (ii) rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
 - (iii) Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project.
 - (d) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and non compensable time extension will be granted. No adjustments will be made for the time between the starting time stated in the Notice to Proceed and the first day of the following month or for the last partial month.
- (3) Other weather conditions. Time extensions for delays due to unusual weather conditions other than rain (such as snow; extreme cold or heat; high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused actual delay to the adjusted as-planned/as-built critical path.

6. Termination For Default - Damages For Delay - Liquidated Damages

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, as may have been modified by executed change orders, or fails to complete said work within this time, the College may, by written notice to the Contractor, terminate his right to proceed (Termination for Default) with the work in full or in part or the part of the work as to which there has been delay. In this event the College may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials including materials stored off-site, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the College resulting from his refusal or failure to complete the work within the specified time.

B. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if the delay in the completion of the work is determined to be an excusable delay in accordance with paragraph D of the Delays Clause.

C. Liquidated Damages:

(1) For each day that the work shall be uncompleted after the contract completion date, as may be extended through a Change Order, the Contractor shall be liable for liquidated damages in the amount specified in the contract. Prior to and after expiration of the contract completion time, the College may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of the Procurement Officer, is behind schedule so as not reasonably to be able to complete the Contract on time. Due account shall be taken of excusable delays, any extensions of time reasonably due the Contractor for completion of additional work under change orders, and for delays for which the College is responsible, provided that the Contractor has properly requested, in writing, time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.

(2) Liquidated damages will be assessed from the date specified as the contract completion date, as may be adjusted by an executed Change Order, per the following:

- (a) If fixed and agreed liquidated damages are provided in the Contract and if the College so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the College in completing the work.

- (b) If fixed and agreed liquidated damages are provided in the Contract and if the College does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
 - (c) The College shall deduct and retain out of the contract amount due to the Contractor hereunder the amount of liquidated damages, and if the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the College for the difference.
- D. If, after notice of termination for default of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of Termination for Default Clause and/or paragraph A of the Termination For Default - Damages For Delay - Liquidated Damages Clause above, or that the delay was excusable under the provisions of the Delays Clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of the College.
- E. The rights and remedies of the College provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.
- F. As used in this Clause, the term "Subcontractors or Suppliers" means Subcontractors or Suppliers at any tier.
- G. If the Contract includes several completion dates for different portions of the work, then the provisions of this Clause shall apply to each completion date.

7. Indemnification

- A. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the College and the Architect and their agents, employees, officers, and trustees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage or loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or Suppliers at any tier to perform any requirement of the Contractor by any negligent act or omission on the part of the Contractor, its Subcontractors or Suppliers

at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Clause.

- B.** In any and all claims against the College or the Architect or any of their agents, employees, officers, or trustees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable, the indemnification obligation under this Clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- C.** The College has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this Contract. The College has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Purchasing Agent by phone with a follow-up in writing within two days of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. The Contractor will cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the Contractor's performance under this Contract.

APPENDIX D
STANDARD FORMS FOR AFFIDAVITS

The College elects to utilize the standardized forms required by the Code of Maryland Regulations Title 21 and issued by the Maryland Department of General Services' Office of State Procurement, as amended from time to time. Such affidavits include but not limited to the following:

Bid or Proposal Affidavit

Contract Affidavit

Living Wage Affidavit

Conflict of Interest Affidavit

Mercury Affidavit

APPENDIX E

STANDARD FORMS FOR BONDS

The College elects to utilize the standardized forms required by the Code of Maryland Regulations Title 21 and/or issued by the Maryland Department of General Services' Office of State Procurement, as amended from time to time. Such bonds include but not limited to the following:

Performance Bond

Payment Bond

Bid bond