

Tradeport Marine Development (“TMD”)

Procurement and Purchasing Policy

**for Purchases for the Performance of a Federal United States Department of
Transportation Maritime Administration TIGER Grant Agreement & the Mid-
Atlantic Multi-Modal Transportation Hub Bulk Optimization Project**

**(In accordance with the Applicable Portions of the Uniform Administrative Requirements, Cost
Principles, and Audit Requirements for Federal Awards, 2 C.F.R. §§200.317 – 200.326 , Procurement
Standards)**

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1. Purpose.

The purpose of this policy is to ensure that goods and services purchased for the performance of the federal TIGER Grant Agreement between the United States Department of Transportation (the “USDOT”) and Baltimore County Maryland, a body corporate and politic, (the “Recipient”) for the Bulk Optimization Project (“the Project”), and TMD as a grant subrecipient (collectively referred to herein as the “federal grant”) are obtained in a cost-effective manner and in compliance with TMD guidelines, federal law and regulations, specifically the applicable portions of the Uniform Guidance Procurement Standards, 2 CFR §§200.317 – 200.326, state and local law and regulation, and the applicable portions of the Baltimore County Procurement Policy.

- 1.1. **Scope:** This policy applies to Program Managers and any designees (“buyer”) authorized to initiate purchases on behalf of a federal grant. This policy is not applicable to the general purchases of TMD not related to a federal grant.
- 1.2. **Responsibility:** The Program Manager is responsible for determining whether a purchase is allowable under the terms of the federal grant and will ensure purchases are in accordance with this policy and applicable federal requirements. If applicable, the Legal Department will also assist with purchase decision support and approval.

2. Purchasing Code of Conduct

As representatives of TMD, all employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside TMD, as described in TMD’s Code of Conduct. This Purchasing Code of Conduct provides additional guidance regarding impermissible conflicts for individuals who may be involved in procurement related to a federal grant.

- 2.1. **Conflicts of Interest.** The following will apply to all acting on behalf of TMD - including Board members, employees, managers or agents - who are engaged in any aspect of procurement, including – but not limited to – purchasing goods and services; awarding contracts and subcontracts or the administration and supervision of contracts or subcontracts.
 - 2.1.1. Conflicts of interest may arise when any employee, officer, director, volunteer, or agent of TMD, or any member of such person’s immediate family, including a partner, or an organization which employs or is about to employ such person, has a financial or other substantial interest in or a tangible personal benefit from a company that TMD selected or considered for an award.
 - 2.1.2. Any employee who becomes aware of a transaction or relationship that may give rise to an actual or potential conflict of interest must disclose the situation to his or her direct supervisor or the Legal Department.
 - 2.1.3. No employee, officer, director, or agent of TMD shall participate in the selection, award or administration of a bid, contract, or subcontract supported by Federal funds if he or she has a real or apparent conflict of interest.

- 2.1.4. No employee, officer, director, or agent of TMD shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse's family or to any company, vendor, or concern who either employs or has any relationship to a family member; or award a contract, subcontract, or bid which violates the spirit or intent of Federal, State and local procurement laws and policies established to maximize free and open competition among qualified vendors.

TMD's employees, officers, directors or agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors or anything having a monetary value in excess of \$20 dollars from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor or bidder; or from any party to a sub-agreement or ancillary contract. This policy does not preclude company to company negotiations with subcontractors or vendors for the procurement of items or services, including credits that may be due. If you have a question regarding whether offer or acceptance of a gift, gratuity, or entertainment is acceptable, you may consult the TMD Code of Conduct or contact the Legal Department.

- 2.2. **Organizational Conflicts of Interest.** 2 C.F.R. part 200 mandates that TMD maintain written standards of conduct covering organizational conflicts of interest and disclose conflicts of interest pursuant to applicable Federal agency requirements. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization, such as in the following circumstances when TMD or its affiliates may be required to, as part of a federal award or subcontract—

- Generate or have access to sensitive nonpublic information from either the federal or state government or a third party that may provide TMD or its affiliate(s) competitive advantage in a later competition for a federal or state contract or award (***Unequal Access to Information OCI***);
- Render impartial advice to the federal or state government, the objectivity of which could be impaired if the impartial advice required involves providing an assessment or evaluation of a product or services provided by TMD or its affiliated companies (***Impaired Objectivity OCI***); or
- Require TMD or its affiliate to write the ground rules for a new TIGER Grant award or other federal procurement or award on which TMD or its affiliates may compete (***Biased Ground Rules OCI***).

It is the policy of TMD to fully and completely comply with these requirements and identify, avoid or mitigate, and report actual or potential OCIs.

- 2.2.1. *Identify Actual or Potential OCIs.* Whenever TMD, including any of its parent, affiliate, or subsidiary organizations, anticipates contemplating and/or doing business with a parent, affiliate, or subsidiary organization that is at least partially funded with federal grant funds, TMD shall assess such situation to determine if an organizational conflict of interest, or the appearance of an organizational conflict of interest, exists.

- 2.2.2. *Determine whether the OCI may be avoided or mitigated.* If TMD determines that an organizational conflict of interest exists (or likely exists), TMD shall determine whether

the organizational conflict of interest can be mitigated or if other action is required to ensure the integrity of TMD's business practices.

2.2.3. *Disclose OCI.* TMD shall comply with any and all disclosure requirements imposed by federal agencies pursuant to the Uniform Guidance. If you believe an organizational conflict of interest may arise, or the appearance of an organizational conflict of interest exists, you are required to immediately report the matter to the supervisor and cooperate with any subsequent action taken.

2.3. **Disclosures.** The Uniform Guidance mandates that recipients of federal grants timely disclose, in writing, to the federal awarding agency (or pass-through entity, if applicable) all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. It is the policy of TMD to fully and completely comply with this requirement.

TMD's failure to make required disclosures as set forth above may be subject to the following actions:

- The temporarily withholding of cash payments pending correction of the deficiency or more severe enforcement action by the Federal awarding agency or pass through entity;
- Disallowance all or part of the cost of the activity or action not in compliance;
- Whole or partial suspension or termination of the award;
- Initiation of suspension or debarment proceedings (or in the case of a pass through entity, recommendation of such a proceeding to the Federal awarding agency);
- Withholding of further Federal awards for the project or program; and/or
- Other remedies that may be legally available.

If you have any questions relating to the above discussed disclosure requirements seek the guidance of the supervisor. If you believe one of the various offenses detailed above have occurred, TMD requires you to immediately report the matter to supervisor and cooperate with any subsequent action taken.

Any infraction of these disclosure policies by an employee of TMD is subject to disciplinary action, up to and including termination, and may result in criminal and/or civil consequences for the individuals involved.

3. Procurement Overview.

To promote compliance with federal regulations, TMD requires buyers to perform some measure of cost/price analysis when making purchases under federal grants. Buyers shall avoid purchasing unnecessary items. All vendor bids and quotations must be evaluated on the basis of product quality, technical compliance with specifications, total cost, and the vendor's acceptance of TMD's terms and conditions. The vendor selection process for goods and services valued at less than \$5,000 (micro-purchase) need not be documented and stored as part of the transaction record. When possible and practical, the purchaser/buyer should award micro-purchases equitably among qualified suppliers. No competitive quotes are required if the buyer/purchaser and management determines that the price is reasonable and that the good/service meets the requirements of the business need. The vendor selection process for goods and services estimated to cost more than \$5,000 and up to and including the Simplified Acquisition Threshold (currently \$150,000) should follow the purchasing procedures and policies for

Small Purchases. Small Purchases require that an adequate number of bids are obtained from applicable vendors/suppliers. The purchaser/buyer should determine the number of bids needed to meet the “adequate” threshold based on the estimated purchase price amount and the product/service requirements. Any purchases over the Simplified Acquisition Threshold should follow the Sealed Bid or Competitive Proposal purchasing policies and procedures. In certain circumstances the Noncompetitive (Sole-Source) method of procurement may be utilized. Specific criteria must be met to utilize this method.

3.1. Pre-Procurement Requirements

Prior to any procurement, buyers shall:

- 3.1.1. Review the grant or contract to ensure that the goods or services to be purchased or contracted are allowable, and there are no additional procurement conditions, specific to that award, that supersede TMD’s policies and procedures.
- 3.1.2. Avoid the acquisition of unnecessary or duplicative items.
- 3.1.3. Determine the price of the procurement and follow the appropriate procedures outlined in the Purchasing Procedure Matrix. A purchase shall not be split into multiple smaller purchases in order to avoid the approval/ documentation process. For larger purchases, such as subcontracts that are incrementally funded, the total anticipated amount of the purchase should be used to determine the approval and documentation process. For example, if a contract is anticipated to have a total funding amount anticipated to exceed \$150,000 over a three-year period, and if the first year is only \$27,000, the buyer should follow the procedure that applies to procurements anticipated to exceed \$150,000.
- 3.1.4. Consider and take positive efforts to utilize small businesses, small disadvantaged businesses, small businesses that are woman-owned or veteran-owned or service disabled veteran-owned, small business enterprises (“Small Businesses”). Consult the following resource to locate Small Business enterprises:
 - i. Hoovers; and
 - ii. Maryland Office of Minority Business Enterprise.

3.2. Contractor Classification

Before entering into a relationship with another entity under a federally funded award in which the other entity will provide goods or services or substantive, programmatic work to TMD as the sub-recipient of funding, a determination must be made as to the nature of the legal relationship of TMD and the other entity, which in turn will determine the type of legal agreement required to document the relationship. This is a significant decision because it determines the allocation of responsibilities and influences the appropriate application of indirect cost rates. In the case of a subcontract, TMD must ensure that subcontractors conduct their portions of work in compliance with all applicable terms and conditions of the funding awards and TMD’s agreement, including, but not limited to a determination that all costs incurred are reasonable and allowable. Agreements with contractors, however, typically do not bind vendors to the full set of sponsor terms and conditions, but have their own unique contract requirements,

and are subject to certain procurement requirements, such as competition, to ensure that funds paid to vendors do not exceed fair market value.

3.3. Definition of Key Terms

Under the Uniform Guidance (2 CFR Part 200), certain key terms are defined as follows:

- Contractor – An entity that receives a contract. (2 CFR §200.23)
- Contract – A legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. (Uniform Guidance §200.22, §200.23)
- Sub-award – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A sub-award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (Uniform Guidance §200.92)
- Sub-recipient – A non-federal entity that receives a sub-award from a pass-through entity to carry out a part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (Uniform Guidance §200.93).

3.4. Guidance Regarding Contractor Determinations

Much of the work required by the TIGER Grant Agreement will require TMD, as the developer, to subcontract work to general contractors, such as for dredging, general area improvements, pile supported concrete structure, and/or heavy lift structure barge berth upgrades. A legal agreement outlining the relationship between the parties and TMD is required and will take the form of an agreement (subcontract) with a contractor (vendor) for purchase of services, including construction services, or supplies. A contractor relationship is appropriate when obtaining goods and services for TMD's programmatic use. Characteristics of a contract relationship may include situations where the entity:

1. Provides goods and services within normal business operations;
2. Provides similar goods and services to many different purchasers;
3. Operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the federal program;
5. Is not subject to compliance requirements of the federal program; and
6. The entity commits to deliverable goods or services, which if not satisfactorily completed will result in nonpayment or requirement to redo deliverables.

Not all of the above referenced characteristics of a contractor relationship will be present in every case. Per the Uniform Guidance, judgment should be used in each individual case in determining whether an entity is a subrecipient or a contractor. For additional guidance on making the subrecipient versus contractor determinations, see Section 200.330 Subrecipient and Contractor Determinations of the Uniform Guidance.

3.5. Purchasing Procedure Matrix

Purchasing Method	Current Dollar Threshold	Description of Bid Procedure
Micro-Purchase	≤\$5,000 (The Baltimore County Threshold)	Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$5,000 per Baltimore County Bidding Procedure (although the federal threshold is now \$10,000). Micro-purchases may be awarded without soliciting competitive quotations if TMD purchaser considers the price to be reasonable.
Small Purchase	≤\$150,000	Small purchase procurement methods and procedures are used for services, supplies, or other property that does not cost more than \$150,000. The buyer will need to obtain price or rate quotations from an adequate number of qualified sources. The number of bids gathered be based on a matter of reasonable judgment.
Sealed Bid	>\$150,000	<p>Procurement by sealed bids should utilize formal advertising to solicit bids from appropriate contractors. Advertising should be placed on publicly available trade websites and in trade publications. Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed Bids are appropriate where:</p> <ul style="list-style-type: none"> (1) Time permits the solicitation, submission, and evaluation of sealed bids; (2) The award will be made on the basis of price and other price-related factors (if the relative strength of non-price factors such as technical capability or past performance are more important than price, than sealed bidding is not appropriate); (3) It is not necessary to conduct discussions with the responding offerors about their bids; and

Purchasing Method	Current Dollar Threshold	Description of Bid Procedure
		(4) There is reasonable expectation of receiving more than one sealed bid.
Competitive Bid	>\$150,000	Procurement by competitive proposals should be conducted with more than one source submitting a proposal (when practicable, at least 3 sources). Either a fixed-price or a cost-reimbursement contract is awarded at the end of the evaluation process. This method should be used when the business need makes a sealed bid process inappropriate. A Vendor Evaluation & Technical Scorecard Form should be filled out for each source and used to make the final contract award.
Noncompetitive Bid	N/A	<p>Procurement by noncompetitive proposal (sole-source) utilizes solicitation of a proposal from only one source. This method may be used only when one or more of the following circumstances apply:</p> <ol style="list-style-type: none"> 1. The item is available only from a single source; 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; 3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or 4. After solicitation of a number of sources, competition is determined inadequate. <p>If it is determined that a Noncompetitive method of procurement is necessary, a Sole-Source Justification form must be completed in addition to the Vendor Evaluation & Technical Scorecard Form and the Vendor Selection Form.</p>

4. Buyer Guidelines

The following sets forth TMD's basic buyer guidelines for contracts. With respect to all contracts, TMD shall ensure that any such contractor is not debarred, suspended or otherwise excluded from or ineligible for participation in federal programs or activities.

- 4.1. **Procurements ≤\$5,000** – TMD may solicit verbal quotations. Formal documentation of vendor selection is not required. TMD buyers are expected to conduct an informal cost/price analysis and select the vendor offering the best mix of quality, service and price for the specified need. TMD shall take reasonable efforts to ensure fair and reasonable pricing and, to the extent practicable, distribute these purchases equitably among qualified suppliers.
- 4.2. **For purchases from ≥\$5,000 to \$150,000** –: Purchases that are anticipated to exceed \$5,000 shall typically be performed in one of two ways, either through a “sealed bid” or a “competitive procurement.”
 - 4.2.1. TMD buyers must solicit written sealed bids or proposals from at least three potential vendors. The solicitation must state whether written bids may be received by mail, fax or email.
 - 4.2.2. Written bids must be submitted in accordance with the solicitation and should be signed/e-mailed by an authorized representative of the vendor.
 - 4.2.3. Each vendor must be provided with the same precise and accurate description of the specifications and technical requirements for the item or service.
 - 4.2.4. If sealed bids are solicited (as opposed to competitive proposals), award will be made to the lowest responsive and responsible bidder—
 - 4.2.4.1. After consideration of discounted payment terms of 30 days or more, if 2 or more bidders are tied for lowest bid, quality and service being equal, the contract shall be awarded to the bidder qualified as a minority.
 - 4.2.4.2. If both are qualified minorities or both are not a minority, the contract shall be awarded to a local (Baltimore County) bidder.
 - 4.2.4.3. In the event there is only one or no responsive bids received, and time does not permit a re-bid, award may be made to the single bidders, or competitive negotiations may be engaged in with the bidder or other companies or individuals.
 - 4.2.5. If competitive proposals are solicited, award made to the responsive and responsible offeror whose proposal represents the best value, taking into consideration price and non-price evaluation factors.
 - 4.2.6. Buyers must complete a “Vendor Evaluation & Technical Scorecard Form” for each source that responds to the request for proposal. Based on the responses and data submitted by the sources the buyer should select the source that represents the most advantageous offer to TMD.

Award. Following the award decision: (a) notify in writing the awardee, along with an executed version of the subcontract; (b) notify in writing the TMD Accounting Department; (c) send a notice of non-selection to offerors that were not selected.

4.3. For purchases anticipated to exceed \$150,000 – Purchases that exceed \$150,000 shall comply with the requirements of Section 8.3 above and the following, additional requirements.

4.3.1. *Independent Estimate.* TMD, either within its organization or in coordination with its design engineer or other consultant(s), must independently estimate the cost or price of the contract work before receiving bids or proposals.

4.3.2. *Negotiate profit where there is no price competition.* Price competition exists where either: (a) two or more responsible offerors, competing independently, submitted priced offers, (b) there was a reasonable expectation that two or more offerors would submit priced offers, or (c) price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted in price competition. Where there is no price competition, such as in a sole-source procurement, TMD must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs are only permitted to the extent they are allowable under the Uniform Guidance.

4.4. Cost Plus Percentage of Cost Contracts. Cost plus percentage of cost contracts are *prohibited*.

4.5. Process for Obtaining Sealed Bids. The Sealed Bid procurement method should be used to procure items and services with easily definable characteristics for the lowest evaluated price. The typical process includes the following steps:

4.5.1. An Invitation for Bids (IFB) is publicly advertised, meaning that advertising is placed in publicly available trade websites and in trade publications.

4.5.2. Sources are given sufficient time to prepare and submit their bids.

4.5.3. The IFB will include any specifications and pertinent information in order for the bidder to properly respond in writing by the time and date specified in the invitation for bid.

4.5.4. The TMD buyer or employee in charge of the bidding process opens all sealed bids at an appointed time, which shall be prescribed in the IFB. Upon opening, the buyer will transfer the bid information and data into the Vendor Evaluation & Technical Scorecard Form. Interested parties can view all the bids at this time through TMD website where each proposal will be made available for download with proprietary information redacted.

- 4.5.5. The TMD buyer then make sure the lowest bidder is both responsive and responsible. The Vendor Evaluation & Technical Scorecard Form will be used to assess responsiveness based on whether companies submit their bids on time and in accordance with the instructions and requirements of the IFB. A bidder's level of responsibility will be based on the company's abilities to fulfill all the contract requirements.
- 4.5.6. In all cases the contract will be awarded to the responsive bid with the lowest evaluated price (meaning the base price plus all options).
- 4.6. **Process for Obtaining Competitive Proposals.** Procurement by competitive proposal is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. If this method is used, the following requirements apply:
 - 4.6.1. The TMD buyer will prepare a Request for Proposal (RFP) containing all the information and instructions necessary for companies to prepare their proposals, which shall include.
 - 4.6.1.1. A clear and accurate description of the technical requirements, in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards, for the material, product, or service desired. The description shall not be designed to limit competitive solicitation from multiple vendors.
 - 4.6.1.2. Requirements that the bidder must fulfill and all other factors to be used in evaluating bids and proposals, including price, which will enable TMD to determine the most advantageous offer.
 - 4.6.2. The TMD buyer will review the proposals and enter the proposal data into the Vendor Evaluation & Technical Scorecard Form. Based on the evaluations and scorecards, the buyer may deem certain proposals competitive enough to continue in the negotiation process (i.e., the ones that are "shortlisted") will be selected. In the event a competitive range is determined:
 - 4.6.3. Negotiations begin between TMD and the shortlisted companies will ensue.
 - 4.6.4. TMD may select a competitive range, which should consist of two or more offerors.
 - 4.6.5. Offerors within the competitive range may be invited to submit revised offers, considering the concerns raised during negotiations.
 - 4.6.6. The proposals will be reviewed again and any new data will be entered into the revised Vendor Evaluation & Technical Scorecard Form.
 - 4.6.7. Based upon all information collected through the above process, the TMD buyer will look for the proposal that is most advantageous to the program, with price and other factors considered, consistent with the evaluation factors of the RFP.
 - 4.6.8. Before the contract is awarded, TMD determines whether the would-be contractor is responsible and has the facilities, quality-assurance processes, financial backing, etc., to complete the contract.

4.7. **Sole – Source/Non-Competitive Vendor Selection.** Occasionally, a buyer is unable to competitively bid its requirements. These situations are characterized as sole or single source transactions. Non-competitive procurements are only justified under the following limited circumstances.

4.7.1. *Bases for Non-Competitive Justifications.* A non-competitive procurement may only be used when one or more of the following circumstances apply:

4.7.1.1. The item is available only from a single source, including where a brand name produce is required and it can only be obtained from the manufacturer or its authorized or franchised distributor (proprietary);

4.7.1.2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

4.7.1.3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from TMD, which may include situations where sole-source award is authorized or required by statute; or

4.7.1.4. After solicitation of a number of sources, competition is determined inadequate.

4.7.2. *Requirement for Written Documentation of the Sole Source Justification to be submitted to Baltimore County.* In the event one or more of the above circumstances are present, Buyers must fill out a **Sole Source Justification Form** and write a narrative justification for the non-competitive procurement based on the guidelines below and provide the written justification to Baltimore County. All documentation should be written clearly so that anyone reading it will understand the reason for the sole source procurement. At a minimum, each justification should contain sufficient facts and rationale to justify the use of the specific reason chosen including:

4.7.2.1. Identification of the reason chosen that permits for other than full and open competition,

4.7.2.2. A background statement that provides information that would assist the reader in understanding the history (e.g., funding source, constraints, etc.) of the procurement,

4.7.2.3. A description of the supplies or services required to meet the contract's or TMD's needs,

4.7.2.4. A demonstration that the proposed vendor/subcontractor's unique qualifications or the nature of the acquisition requires use of the reason chosen and essential to the requirements,

4.7.2.5. A description of efforts made to ensure that offers were solicited from as many potential sources as is practicable, and a determination that the pricing/costs are fair and reasonable,

- 4.7.2.6. A description of the market research conducted and the results or a statement of the reason market research was not conducted,
- 4.7.2.7. Any other facts supporting the use of a sole source procurement, and
- 4.7.2.8. A listing of the sources, if any, that expressed in writing an interest in the acquisition.

5. Baltimore County Specific Requirements

- 5.1. All subcontractors must be on prequalified list of the County’s Department of Public Works, unless otherwise approved in advance in writing by the Director of Public Works. The List can be obtained from Office of the Director of Public Works, 111 W. Chesapeake Avenue, Suite 307, Towson, MD 21204 (410) 887-3300.
- 5.2. TMD shall meet the Minority Business Enterprise (“MBE”) or Women Business Enterprise (“WBE”) requirements.
 - 5.2.1. Subcontractors must be certified either through the State of Maryland Department of Transportation or the Baltimore City Office of Minority and Women’s Business Opportunity Office. Contractor and subcontractors must enter compliance information on County’s PRISM system. (<https://BaltimoreCunty.PRISMCompliance.com>)
 - 5.2.2. Questions may be directed to Carla Tucker, Minority and Small Business Marketing Manager at (410) 997-3319 or Warren Squirewell, Minority Business Enterprise Officer at (410) 887-3415.
- 5.3. Subcontractors must be in good standing in the State of Maryland as well as the state of organization, if a foreign entity. If a subcontractor is merely shipping goods into the State of Maryland and has no other nexus, then good standing in Maryland is not required, however, they must be in good standing in the state of organization.

6. Domestic Preference Requirements.

- 6.1. **American manufactured goods required.** Contractor and subcontractors shall use or supply American manufactured goods pursuant to the Buy American Act, 41 U.S.C. §§ 8301–8305 and Executive Order 13788 – Buy American and Hire American, except as provided in Section 14-416(c) of the State Finance and Procurement Article of the Annotated Code of Maryland.
- 6.2. **American steel required.** Contractor and subcontractors shall use or supply only American steel products, in accordance with Section 17-303 of the State Finance and Procurement Article of the Annotated Code of Maryland.

7. Record Retention of Procurement Records.

The buyer must retain a copy of each procurement, including the following: advertisements; solicitation, including amendments; correspondence with offerors; the offers received, and any revisions to offers; records of discussions, if any; the selection decision; award and disappointed offeror notices; the awarded contract, including modifications, and post-award negotiations.

8. Federal Flowdowns.

The TMD buyer shall flowdown all applicable federal, state, and local requirements, as provided in the standard flowdown provisions.

9. Procurement Affidavit.

The TMD buyer and TMD's subcontracts must execute the Procurement Affidavit certifying to Baltimore County the following:

- 9.1. Affirmation regarding bribery convictions
- 9.2. Affirmation regarding other convictions
- 9.3. Affirmations regarding debarment
- 9.4. Affirmation regarding collusion
- 9.5. Affirmation regarding political contribution disclosure
- 9.6. Certification of registration and tax payment
- 9.7. Affirmation regarding contingent fees
- 9.8. Affirmation of nondiscrimination in employment
- 9.9. Foreign contracts disclosures
- 9.10. Affirmation regarding investment in Iran

TECHNICAL EVALUATION FACTORS

The technical proposal and any oral presentations, if required, will be carefully evaluated for conformance with the requirements of this RFP and selection of the successful offerors will be based upon this evaluation. Subsequent price negotiations will be initiated with the offerors submitting the highest rated technical proposals. Each element of the Technical Proposal outlined below will be evaluated separately. While each element of the Technical Proposal will be evaluated separately, each element will not carry equal weight. Technical evaluation factors may be as important as, and in some cases more important than, price. The evaluation criteria will include the following factors.

Evaluation Factors

- 1. Experience on Similar Port, Industrial and Commercial High-Rise Projects:** Evaluation will include the contractor's experience in successfully completing similar Port and Industrial Projects of a similar dollar value and scope; management approach to complete the tasks within the specified time frame and within the budget; the level, complexity and quality of work performed; and references submitted for consideration.
- 2. Capability and Capacity: Evaluation** will include the contractor's capability and capacity to perform the work in the required time and subject to the terms and conditions of the proposed contract.
- 3. Familiarity with Local Conditions:** Evaluation will consider the contractor's experience and knowledge of local conditions.
- 4. Contract Organization and Key Personnel:** Evaluation will include organization of resources, quality and experience of proposed staff (prime and sub-contractors); availability of appropriate personnel and sub-contractors in a timely fashion
- 5. Response to Scope of Services:** Evaluation will include comprehension of the project's requirements and the quality of the technical approach and methodology and work plan.

Oral Presentation: The Oral Presentation (if held) will be used in the evaluation of the above referenced technical factors to reinforce and validate what was presented in the Technical Proposal. The presenters should be the key staff personnel identified in the proposal. Oral presentations should be designed to corroborate the offeror's expertise, experience and education as well as the quality and soundness of its methodology, work plan, schedule and its comprehension of the RFP scope of work requirements.

VENDOR EVALUATION & TECHNICAL SCORECARD

Subcontractor/ Vendor Name: _____

Contract Name/Number: _____

Evaluation Date: _____

Subcontractor/Vendor Price: _____

Evaluation Factor	Factor Weight	Factor Score	Composite Factor Score
1) Similar Experience			
2) Capability & Capacity			
3) Familiarity w/ Conditions			
4) Contract Organization & Key Personnel			
5) Response to Scope of Services			
TOTAL TECHNICAL SCORE			

COMMENTS:

VENDOR SELECTION FORM

Subcontractor / Vendor Name: _____

- This form must be used to document the selection of vendors for all purchases that are anticipated to exceed \$5,000.
- Section I must always be completed in entirety.
- If choosing a pre-qualified vendor, attach a quotation or explanation of pricing, and complete Section I and signature sections only
- Procurements that are anticipated to exceed \$150,000 require a RFQ or RFP and written proposals, which must be included with this form.

Section I. Basic Information: Complete for all procurements of anticipated to exceed \$5,000:

Grant Name: _____

Grant Contact Name: _____

Purpose of Procurement:

Service or Item Description:

Vendor Suspended/Debarred? Circle One: Yes No

Vendor Selected: _____ Price: _____

Was this vendor chosen from Baltimore County’s prequalified list of the County’s Department of Public Works, unless otherwise approved in advance in writing by the Director of Public Works Vendor List? Circle One: Yes No

Section II. Competitive Selection: Same item or services priced by several vendors. Record oral or written quotations below, and attach copies of any RFQs/RFPs and bids/quotations to this form as required by the procurement policies.

a. Vendor A: _____ Price/Technical Score: _____

b. Vendor B: _____ Price/Technical Score: _____

c. Vendor C: _____ Price/Technical Score: _____

Cost/Price Analysis *(For procurements in excess of \$150,000 where adequate price competition did not exist. Price competition exists where either: (a) two or more responsible offerors, competing independently, submitted priced offers, (b) there was a reasonable expectation that two or more offerors would submit priced offers, or (c) price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect*

changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted in price competition.):

Describe Elements of Cost:

Negotiated Profit (State percentage on which fixed fee was negotiated): ____%

Describe the risk of the work:

What investment was required by the contractor?

What amount was the contractor required to subcontract?

Quality of contractor's Past Performance?

Section III: Sole Source Procurement. Circle One: Yes No

If "Yes" fill out a TMD Sole Source Justification Form and attach it to this form

Section IV: Signatures: Buyer is responsible for obtaining signatures.

Project Director (required):

Printed Name	Signature and Date
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TMD Authorized Official (required for > \$5,000):

Printed Name	Signature and Date
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[Insert title of officer under Bill of Authority with Authority to Sign] (required for > \$150,000):

Printed Name	Signature Date
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TMD Sole Source Justification Form

Provide this form to Maryland County for justification of sole source procurements.

I. Vendor proposed as a Sole Source:

II. Check all categories that apply and provide additional information where indicated:

A. The requested product is an integral repair part or accessory compatible with existing equipment and is not available from another source.

Existing Equipment Description: _____

Manufacturer/Model Number: _____

Age of the Equipment: _____

Current Value: _____

Asset: _____

B. The requested product has unique design/performance specification or quality requirements which are essential to TMD's needs and are not available in comparable products from another source.

C. The requested product or service is essential in maintaining continuity and/or to remain in compliance with TMD standards, and therefore another source cannot satisfy my needs. (Describe need below.)

D. The requested product is one with which I have specialized training/extensive expertise, and retraining would incur substantial costs in time/money, and therefore another source cannot satisfy my needs.

E. The requested provider of services has unique or exclusive capabilities that no other provider has. (Describe unique or exclusive capabilities below)

F. Other factors are involved. (Provide detailed explanation below.)

III. Provide a detailed explanation for any categories from II.A through II.F above that have been checked. Attach additional sheets if necessary.

IV. Was an evaluation of other equipment, products, or services completed? Yes No

If yes, please attach the results of the evaluation. If no, explain why no such evaluation was needed or possible.

V. List below the names of each individual who was involved in making the recommendations to sole source this purchase.

VI. I certify that I have read the above statement, that the information entered on this form is factual and that a signed copy of this sole Source Justification document, and all associated disclosure statements, will be kept on file.

Signature

Printed Name and Title

Dates of Use

BALTIMORE COUNTY, MARYLAND

PROCUREMENT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____ and I am duly authorized to represent and bind [business] (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 6-225 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the Business]:

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;

(6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, and the status of any debarment]:

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceeding, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension]:

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The Business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The Business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows: [you must indicate the reasons why the affirmations cannot be given without qualification]:

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or

indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, nor any of its employees, have in any way:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise take any action to impact, restrain, or inhibit free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted;

(3) Colluded with anyone to obtain information concerning the bid that would give the Business an unfair advantage over others.

H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

I. CERTIFICATION OF REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The Business is a (Insert State Name) (Example: Maryland, Ohio, Iowa.) (Select One: Corporation, Partnership, Limited Liability Company, Limited Liability Partnership, Sole Proprietor) (_____), that it is registered in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, that it is in good standing in the State of Maryland, and that it has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If none, so state).

(2) Except as validly contested, the Business has paid, or has arranged for payment of, all taxes due the State of Maryland and Baltimore County, and has filed all required returns and reports with the

Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The Business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Business, to solicit or secure the Contract, and that the Business 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 other consideration contingent on the making of the Contract.

K. NONDISCRIMINATION IN EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:

(1) The Business will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Business will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Business agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Business will, in all solicitations or advertisements for employees placed by or on behalf of the Business, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Business shall send to each labor union or representative of workers with which the Business has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Business shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.

(5) In the event of the Business's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Business may be declared ineligible for further County work.

(6) The Business shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

L. FOREIGN CONTRACTS

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 — Purchasing, Baltimore County Code 2003, as amended, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States. The disclosure shall be made to the Office of Budget and Finance, Purchasing Division.

M. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any right or remedy at Law or in equity with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Business with respect to (a) this Affidavit, (b) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

By: _____

Name:

Title:

(Authorized Representative and Affiant)