

**Wicomico County Purchasing Department
125 N. Division Street, Room B-3
Salisbury, Maryland 21801**



INVITATION FOR BID

PROJECT: <u>Bullet Resistant Panels – Materials and Installation</u>
DEPARTMENT: <u>States Attorney Office</u>

VENDOR:

NAME: _____
ADDRESS: _____

BID OPENING:

DATE: <u>September 10, 2015</u>
TIME: <u>2:00 PM EST</u>

I. BID INSTRUCTIONS

A. SUBMISSION OF BIDS

1. Two full copies of the bid must be submitted on the bid form provided in the solicitation and can be submitted in the same envelope unless otherwise instructed.
2. The bid forms shall be signed and submitted in a sealed envelope clearly identified on the outside of the mailing envelope with the name of the bid/project and date and time of the scheduled bid opening as indicated in the advertisement.
3. Electronically mailed bids are **not** considered sealed bids and will **not** be accepted.

B. DELIVERY OF BIDS

1. Bids should be mailed or hand carried to Wicomico County Purchasing Department, 125 N. Division Street, Government Office Building, Room B-3, Salisbury, MD 21801, in order to be received in the office of the Purchasing Agent **prior** to the announced bid deadline. *Bids received after said time or delivered to the wrong location will be returned to the bidder unopened.*
2. If you are delivering a bid in person please keep in mind to allow time to sign-in at the security station in the lobby. It is fully the responsibility of the bidder to insure that the bid is received on time.
3. The County will not speculate as to reasonableness of the postmark, nor comment on the apparent failure of a public carrier to have made prompt delivery of the bid.

C. QUESTIONS/ADDENDUM

1. Bids are subject to change in the form of an addendum. Questions must be addressed in writing to Wicomico County Purchasing at purchasing@wicomicocounty.org.
2. All questions should be asked no later than seven (7) calendar days in advance of the bid. Addenda are posted on the County website at www.wicomicocounty.org under Government: Departments: Purchasing: at

www.wicomocounty.org/bids.aspx at least five (5) calendar days before bid opening.

3. It is the bidders responsibility to make sure all addenda are acknowledged in their bid. Failure to do so could result in the bid being disqualified.

D. QUALIFICATIONS

1. The Bidder must be in compliance with the laws regarding conducting business in the State of Maryland.

All Bidders shall provide a copy Certificate of Status from the Maryland Department of Assessments and Taxation, evidencing the Bidder is in good standing with the State of Maryland. See https://sdatcert1.resiusa.org/certificate_net/ for information on obtaining the Certificate of Status. *Certificates of status are not available for trade names, name reservations, government agencies, sole proprietorships, and some other accounts as these are not legal entities and thus are not required for these categories of bidders.* For more information on the Certificate of Status please see <http://www.dat.state.md.us/sdatweb/COSinfo.html> .

2. Wicomico County reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation could result in the bid being rejected.
3. On bids *with a contract value over \$25,000* bidders must certify that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid submitted to Wicomico County by completing Attachment B.
4. All vendors who wish to bid on County projects and contracts need to register as a bidder at www.wicomocounty.org/list.aspx?Mode=Subscribe#bids by checking off the categories for which you wish to be informed of future bids.

E. DESCRIPTIVE LITERATURE

1. Descriptive literature fully describing the product bid (where such literature exists) shall be included with the bid to assist the issuing Department in

evaluating the submission. Failure to do so may be cause for rejection of the bid.

2. Any items, systems or devices supplied in this bid that are proprietary in nature relative to maintenance, repair, servicing or updating must be disclosed on the bid form.

F. EXCEPTIONS

1. Any exceptions to the specifications requested should be marked on the bid form and listed on a separate sheet of paper attached to the bid.
2. An exception to the specifications may not necessarily disqualify the bid. The County will determine if the exception is an essential deviation or a minor item.
3. In the case of a minor deviation, the County maintains the option to award to that bidder if it determines the performance is not adversely affected by the exception.

G. APPROVED EQUALS

1. In all specifications where a material or article is defined by describing a proprietary product or by using the name of a vendor or manufacturer, it can be assumed that an approved equal can be substituted.
2. The use of a named product is an attempt to set a particular standard of quality and type that is familiar to the County. Such references are not intended to be restrictive.
3. However, the County shall decide if a product does in fact meet or exceed the quality of the specifications listed in the solicitation. It shall be the responsibility of the vendor that claims his product is an equal to provide documentation to support such a claim.

H. SALES TAX

1. In buying products directly from a vendor Wicomico County is exempt from being *directly* charged Federal excise and Maryland sales tax. A copy of an exemption certificate shall be furnished upon request.

2. According to the Office of the Comptroller of Maryland, a *Contractor is responsible for paying sales tax* on his/her purchases relating to any projects or services and should incorporate it into their bid.
3. Contractors cannot use the County tax exemption to buy materials or products used on County projects.

I. DELIVERY

1. All items shall be delivered F.O.B. destination and delivery costs and charges included in the bid unless otherwise stated in the specifications or bid form.

J. INSURANCE

1. The bidder must provide the County with Certificates of Insurance within ten (10) days of bid award notification evidencing the required coverage (See Terms and Conditions – Insurance).
2. Bidder must provide Certificates of Insurance before commencing work in connection with the contract.

K. BID EVALUATION

1. If some characteristic of the bid requires that the bid must be reviewed by the County Council, the award can be expected within 30 days.
2. Bid tabulations will be posted on the County website at www.wicomicocounty.org/bids.aspx and click on the box Show Closed/Awarded/Cancelled Bids and find the bid tabulation for the bid you are interested in. The tabulations will typically be posted within 24 hours of the bid opening. *Please use this resource rather than calling the Purchasing Office.*
3. Bid evaluations typically take 1-2 weeks.

L. RIGHT TO REJECT

1. Wicomico County reserves the right to reject any and/or all bids or to waive any technicality it deems in the best interest of the County.

M. AWARD OF BID

1. The County shall award the bid to the best, responsive and responsible bidder complying with the provisions of the Invitation for Bid.
2. All bid awards are contingent upon available funding.
3. The Purchasing Agent reserves the right to award a bid by individual items, in aggregate, or in combination thereof as deemed necessary to fulfill the anticipated requirements of the County.
4. All awards over \$1000.00 require a Purchase Order to be executed before any work can be started. Some awards will require a County contract.

N. PIGGYBACKING

1. Wicomico County may authorize, upon request, any governmental entity (hereafter Authorized User) within the County to purchase items under the contract awarded pursuant to this bid solicitation.
2. All purchase orders issued against the contract by an authorized User shall be honored by the Contractor in accordance with all terms and conditions of this contract.
3. The issuance of a purchase order by an Authorized User pursuant to this provision shall constitute an express assumption of all contractual obligations, covenants, conditions and terms of the contract. A breach of the contract by any particular Authorized User shall neither constitute nor be deemed a breach of the contract as a whole which shall remain in full force and effect, and shall not affect the validity of the contract nor the obligations of the Contractor thereunder respecting the County.
4. The County specifically and expressly disclaims any and all liability for any breach by an authorized User other than the County and each such Authorized User and Contractor guarantee to save the County, its officers, agents and employees harmless from any liability that may be or is imposed by the Authorized User's failure to perform in accordance with its obligations under the contract.

O. PUBLIC INFORMATION ACT (PIA)

1. Wicomico County is subject to the Maryland Public Information Act and may be required to release bid submissions in accordance with the Act.

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2. Any materials the bidder deems to be proprietary or copyrighted must be marked as such; however, the material may still be subject to analysis under the Maryland Public Information Act.

II. GENERAL CONDITIONS

A. QUALIFICATIONS OF BIDDER AND DISQUALIFICATION OF BIDS

1. All bidders are to be acceptable to the Owner and shall be skilled in the class of work for which they bid. Bidders shall furnish in writing, a list of references (See Attachment A) that have performed work of similar character and magnitude of that on which they are bidding.
2. The contractor shall examine the premises and observe the conditions under which the work will be done, or other circumstances which will affect the contemplated work. No allowance will be made subsequently in this connection for any error or negligence on the contractor's part.
3. The bidders shall familiarize themselves with the total scope of work avoiding misunderstandings in regard to the nature and character of the work to be performed. All work shall be the best of its kind and done in accordance with good standard practice.
4. The bidders must adhere strictly to the specifications. Any change or deviation from the specifications or any detail in which their product or services differ from these specifications must be examined in detail in a separate letter accompanying their bids.

B. GUARANTEE

1. The contractor shall furnish the Owner with a two-year guarantee of workmanship and materials, dating from time of acceptance of the project and shall make good any defects which may occur during that period.
2. If any special guarantees in excess of the two-year period are specified by the manufacturer, these guarantees shall take precedence over the two-year period guarantee.
3. Upon completion of work, and before final payment or release of retainage, submit, and obtain from each subcontractor, material supplier and equipment manufacture general warranties and a notarized asbestos free guarantee.

C. TIME FOR COMPLETION

1. The work contemplated under this contract shall be considered as continuous and be completed within 60 days upon issuance of a Notice to Proceed.
2. The contractor will be allowed to work eight (8) hours per day, Monday through Friday, except for holidays, 52 weeks per year.
3. The contractor will not be permitted to work on holidays observed by Wicomico County or the State of Maryland or on Sundays unless otherwise authorized in writing.
4. In case of an emergency which may require that work be done on Saturdays, Sundays, and Holidays, the contractor shall request permission of the owner to do so. If, in the opinion of the owner, the emergency is bonafide, permission may be granted to the contractor to work such hours as may be necessary. Also if in the opinion of the owner a bonafide emergency exists, the contractor may be directed to work such hours as may be necessary whether or not the contractor requests permission to do so.
5. The contractor shall pay the owner for all costs incurred for inspection services required for work permitted during holidays, weekends or in excess of eight (8) hours per day.

D. PENALTY

1. If the contractor shall fail to start and complete the project within the time frame stated above, the Owner shall assess a penalty of \$200.00 per calendar day for each and every day the contractor fails to complete the contract.
2. The designated County project manager reserves the option to extend the scheduled completion date or waive this penalty clause in its entirety if he is of the opinion that extenuating circumstances deemed such action appropriate.

E. CHANGES IN WORK

1. The owner, without invalidating the contract, may order extra work or make changes by altering, adding or deducting from the work with the contract sum being adjusted accordingly.
2. All such work shall be executed under the conditions of the original of the original contract, except that any claim for the extension of time caused thereby shall be adjusted at the time of ordering such change.

3. The value of any such extra work or change shall be determined in one or more of the following ways:
 - a) By estimate and acceptance of lump sum
 - b) By unit prices named in the contract or subsequently agreed upon.

F. ERRORS OR OMISSIONS IN DRAWINGS AND SPECIFICATIONS

1. Should any detail be omitted from the drawings or specifications, or should any errors appear in either, it shall be the duty of the contractor to notify the owner's designated construction inspector.
2. In no case shall the contractor proceed with the work without notifying and receiving definite instructions from the Owner. Work wrongly constructed without such notification shall be corrected by the contractor at his own cost.

G. SAMPLES OF APPROVAL OF SUBSTITUTION OF MATERIALS

1. Samples of materials shall be submitted by the Contractor for approval before such materials are ordered from the manufacturers or distributors and shall be approved by him before actual work is begun.
2. It is the intention of these specifications to permit all contractors bidding on this work to secure the fullest amount of competition on the various materials and specialties names herein. Wherever a material or article is defined by describing a proprietary product or by using the name of a vendor or manufacturer, the term or approved equal shall be presumed to be implied unless otherwise stated.

H. BUILDING INSPECTION

1. The work under this contract shall conform to local building codes, except where something better is shown or specified.
2. The owner or his representatives may, at any time, enter upon the work and the premises used by the contractor, and the contractor shall provide proper and safe facilities to secure convenient access to all parts of the work, and all other facilities necessary for inspection, as may be required.
3. The owner will appoint such persons as he may deem necessary to properly inspect the materials furnished or to be furnished, and the work done under the

contract and to see that the same strictly corresponds with the drawings and specifications. All such materials and workmanship shall be subject to approval of the Owner. Approval or acceptance of payment shall not be misconstrued as approval of items or work not in conformance with specifications and drawings nor shall it prevent the rejection of said work or materials at any time thereafter during the existence of the contract, should said work or materials be found to be defective, or not in accordance with the requirements of the contract.

4. Work and material will be inspected promptly, but if for any reason should a delay occur, the contractor shall have no claim for damages or extra compensation.
5. The contractor shall pay for all inspection costs necessary to complete the work which may be incurred to comply with the requirements of any agency other than the owner, such as a railroad, public service utility company, or any other governmental agency or any other agency whose jurisdiction affects the work in any manner unless otherwise specified herein.

I. LICENSES AND PERMITS

1. The contractor shall have all necessary licenses required to do the work and give all notices and obtain and pay all necessary permits required by local laws and regulations for building.
2. State and Federal permits (if applicable) to undertake work have been obtained by the owner and accompany these specifications.

J. SUPERVISION

1. The contractor shall maintain, at all times during the progress of work, a competent and experienced supervisor who shall represent the contractor, and all directions given to him shall be binding. Important decisions of any directions, if requested by the supervisor, shall be confirmed in writing.
2. Supervision by the owner or his representative does not relieve the contractor of responsibility for defective work executed under the direct control of the contractor. Responsibility for defective work rests upon the contractor, whether discovered by the owner prior to final payment or subsequent thereto.

K. CLEAN UP

1. Upon completion of the items within a given location as specified and before monthly estimates will be paid, the construction area and all other areas occupied by the Contractor during the construction of said Contract shall be cleaned of all surplus and discarded materials, bracing, forms, rubbish and temporary structures that were placed there by the Contractor.
2. Disposal of the aforementioned shall be the responsibility of the Contractor.

L. BARRICADES, DANGER, WARNING AND DETOUR SIGNS

1. The Contractor shall provide, erect and maintain all necessary barricades, sufficient red lights, flares, danger signals and signs, provide a sufficient number of watchmen and take all necessary precautions for the protection of the work and safety of the public.

M. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE

1. Bidders shall make a personal examination of the location of the proposed work and of the surroundings thereof, and shall thoroughly acquaint themselves with the details of the work to be done and all the conditions and obstacles likely to be encountered in the performance and completion of the work.
2. Bidders shall inform themselves as to the facilities for the transportation, handling and storage of equipment and materials, and they shall carefully study the plans, specifications and other conditions under which the work is to be done and as to the character, qualities and quantities of work to be performed and materials to be furnished, and be prepared to execute a finished job in every particular without extra charge whatever, except as may be specifically provided for elsewhere in these contract documents.
3. No allowance will subsequently be made in this regard for error and/or negligence on the part of the contractor.

N. WORKMANSHIP

1. First class work shall be performed and all materials furnished in carrying out the contract shall be of character and quality required by the specifications. Where no standard is specified for such work or materials, they shall be the best of their respective kinds. Any unsatisfactory work done or materials furnished, at whatever time they may be discovered, shall be immediately

removed and satisfactorily replaced by the contractor, when notified to do so by the owner.

2. The contractor shall employ only competent labor specifically experienced in the proposed work. Any employee who is careless, incompetent, disorderly, or who uses abusive or profane language shall be discharged or removed from the project on request of the owner.
3. The work shall be under the general supervision of the owner and its duly appointed field representatives, in accordance with a general plan agreed upon between the owner and the contractor. The contractor shall appoint a competent superintendent and necessary foreman for the direct supervision of the work. The supervisor shall be on the job at all times that the work is in progress, and shall be available during non-working hours in event of an emergency.

O. CONSTRUCTION SAFETY AND HEALTH STANDARDS

1. It is a condition of this contract, and shall be made a condition of each sub-contract entered into pursuant to this contract, that the contractor and any sub-contractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time, promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standard Act.) (83 Stat. 96).
2. Failure of Wicomico County to inform the contractor of safety violations will not release the contractor of his responsibilities.

P. PROTECTION OF PRIVATE AND PUBLIC PROPERTY

1. The contractor shall take all necessary precautions to protect the existing county facilities, whether or not shown on the plans.
2. The contractor shall be held responsible for any damages and the cost of repairing these damages shall be paid by the contractor.

III. BID SPECIFICATIONS

A. PROJECT DESCRIPTION

1. The County States Attorney's Office wishes to have bullet resistant panels installed in their reception area walls.
2. The vendor will provide custom cut panels and install them according to the below specification and the Manufacturer's requirements. See **DIAGRAM A** attached.
3. The vendor will provide cut sheets for the product they plan to use for review as well as a copy of the Manufacturer's installation instructions.

B. SPECIAL INSTRUCTIONS

1. GENERAL

1.1 REFERENCE

The publications listed below form a part of this specification:

- a) UNDERWRITERS LABORATORY UL 752 10th Edition, Standard for Bullet Resisting Equipment dated March 10, 2000.
- b) ASTM E119-98 Standard Test for One-Hour Fire-Rating of Building Construction and Materials.

1.2 SUBMITTALS

- a) Submit for approval prior to fabrication samples, brochures, specifications, UL LISTING
 - i. Verification and UL752 Current Test Results as provided by Underwriters Laboratories, and printed data in sufficient detail to indicate compliance with the contract documents.
 - ii. ASTM E119-98 One-Hour Fire Rating of Building Construction and Materials. Manufacturer's Instructions for installation of Bullet Resistant Fiberglass Panels.

1.3 DESIGN

- a) Through the design, manufacturing technique and material application the Bullet Resistant Fiberglass shall be of the "non-ricochet type".
- b) This design is intended to permit the encapture and retention of an attacking projectile lessening the potential of a random injury or lateral penetration.

1.4 DELIVERY, STORAGE AND HANDLING

- a) Deliver the materials to the project with the manufacturer's UL LISTED Labels intact and legible. Handle the material with care to prevent damage.
- b) Store the materials inside under cover, stack flat and off the floor.

1.5 WARRANTY

- a) All workmanship shall be warranted against defects for a period of two (2) years from the date of receipt at the project site.
- b) Materials shall have a limited Manufacturer's warranty of 25 years.

2. PRODUCTS

2.1 BULLET RESISTANT FIBERGLASS MATERIAL

- a) The panels shall be made of multiple layers of woven roving ballistic grade fiberglass cloth impregnated with a thermoset polyester resin and compressed into flat rigid sheets.
- b) The production technique and materials used shall provide the controlled internal delamination to permit the encapture of a penetrating projectile.
- c) Bullet Resistant Fiberglass panels: 7/16" *maximum* thickness and 4.7

pounds per square foot *maximum* weight.

2.2 SECURITY LEVEL

- a) The Bullet Resistant Fiberglass will be rated and tested for UL752 Level 3.
- b) Additionally this product will meet or exceed the ballistic protection rating of NIJ Level 3A as per National Institute of Justice

3. EXECUTION

3.1 SUPPORTING MEMBERS

Prior to installing the bullet resistive material the contractor shall verify that all supports have been installed as required by the contract documents and the architectural drawings.

3.2 JOINTS

- a) All joints shall be reinforced by a back-up layer of bullet resistive material.
- b) The bullet resistance of the joint, as reinforced, shall be at least equal to that of the panel.
- c) Minimum width of reinforcing layer at joint shall be 4-inches (2" on each panel or a 2" minimum overlap).

3.3 APPLICATION

- a) Panels shall be installed in accordance with the manufacturer's printed recommendations.
- b) Panels shall be adhered using an industrial adhesive, mastic, screws or bolts. Self-adhesive methods may also be proposed.
- c) Method of application shall maintain the bullet resistive rating at junctures with the concrete floor slab, the bullet resistive window frames, and all required penetrations.

IV. BID FORM (PAGE 1 OF 2)

Bidder Name: _____

TO: Wicomico County Purchasing Department
Government Office Building
125 North Division Street, Room B-3
Salisbury, MD 21801

Date: _____

BID – Bullet Resistant Panels – Materials and Installation

Lump Sum Project Cost \$ _____

Other Expenses (Please itemize on separate sheet) \$ _____

Grand Total \$ _____

Two copies of bid enclosed Yes _____

Projected completion date - _____ days from Notice to Proceed

Exceptions YES _____ NO _____ If yes please attach on a separate sheet.

Mfg. Specifications or Cut Sheets provided YES _____ (must provide)

Mfg. Installation instructions provided YES _____ (must provide)

ADDENDUM CERTIFICATION

The undersigned acknowledges that he/she received the following Addenda to the Specification for the above-identified bid, and that this bid was prepared in accordance with said Addenda.

Addenda Date	Addenda Number	Acknowledgement (signed)
_____	_____	_____
_____	_____	_____
_____	_____	_____

*****Bid Form not complete without signatures on following page*****

IV. BID FORM (PAGE 2 OF 2)

The bidder agrees that the bid will be good for at least 30 days unless otherwise indicated in the bid specifications.

I have read, understood, and agreed to the terms and conditions of all contents of this BID. The undersigned agrees to furnish the commodity or service stipulated in this BID as stated above.

SIGNATURE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL: _____

ATTACHMENT A
BIDDER'S EXPERIENCE/REFERENCES

Name of Vendor: _____

Each Bidder must submit below a minimum of three (3) references each, from current or past clients, for whom bidder has similar experience

Complete contact information for each reference, including name, telephone number, mailing address and E-mail address, must be included with the bid.

1) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

2) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

3) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ **Email Address** _____

ATTACHMENT B
NON-COLLUSION AFFIDAVIT

DATE _____

Wicomico County
125 N. Division Street
Salisbury, Maryland 21801

To Whom It May Concern:

This is to certify that the undersigned bidder _____

has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid submitted to Wicomico County

Proposal / Bid _____

Name of Bidder _____

Signature of Authorized Representative

Title of Authorized Representative

Swore to and subscribed before me this _____ day of _____, 20____

My commission expires _____, 20____.

Notary Public

(Notary Seal)

EXHIBIT A

Revised 2014-10

**WICOMICO COUNTY, MARYLAND
STANDARD TERMS AND CONDITIONS**

This document sets out provisions generally applicable to all Wicomico County ("County") contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "Department" includes the County, its various departments, unit, agencies, employees or agents as may be appropriate. The term "Contract" shall include a document entitled "agreement" or any other title on a document that is denoting a contract. The Wicomico County Executive is the person authorized to enter into contracts for Wicomico County.

Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the County immediately. Upon learning of the actions herein identified, the County reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the County may have as provided in this County or by law.

Compliance with Law. The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with the professional standards;
- C. 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;
- D. It is not in arrears in the payment of any obligations due and owing to the County 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;
- E. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. 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.

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 Contract, 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 commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

Force Majeure. Neither the County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, County declaration of emergency, or war where such cause was beyond, respectively, the County's or Contractor's reasonable control. The County and Contractor shall make all reasonable efforts to remove or eliminate

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such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland and Wicomico County without regard to principles of conflicts of law.

Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify the County including its officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of Wicomico County, its officers, agents and employees.

Independent Contractor.

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although the County reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by the County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of the County, is not currently employed by the Federal Government, and is not an officer, employee or agent of the County.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide the County notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without the County's written consent, any obligation of the County to indemnify Contractor for any actions under this Contract.

Insurance Requirements.

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with the County to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall provide the County with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to the County shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

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Nondiscrimination. A contractor who is the recipient of County funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to the County upon request by the County and shall become and remain the exclusive property of the County upon termination or completion of the services. The County shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The County shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to the County of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the County.
- C. The Contractor shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless the County, its officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor. If an invoice remains unpaid 45 days after the invoice was received, interest shall be charged at a rate of nine percent (9%) per annum, in accordance with state law.

Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the County and its duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Remedies.

- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the County. The acceptance of the work set forth herein by the County shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.
- B. Set Off. The County may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the County, its agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of County and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County by law.

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Responsibility of Contractor.

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the County, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above it shall, if required by the County, perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies of damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the County under the "Remedies" paragraph, or otherwise available by law.

Severability/Waiver. The County and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

Subcontracting or Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the County. The County has the right to withhold such consent for any reason the County deems appropriate.

Substance Abuse and Drug Testing. Contractors and contract employees are subject to the provisions of the County's policy on substance abuse and drug testing regarding the use, possession, or sale of drugs or alcohol while performing County business or while in a County facility. Violation of these provisions or refusal to cooperate with implementation of the County's policy on substance abuse and drug testing can result in the barring of contract personnel from County facilities or from participating in County operations.

Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, the County may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the County's option, become the County's property. The County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the County can affirmatively collect damages.

Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the County, in whole or in part, upon written notice to the Contractor, when the County determines such termination is in the best interest of the County. The termination for convenience is effective on the date specified in the County's written notice. The County will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-year Contract. If the County 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 fiscal 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 County's rights or the Contractor's rights under any

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termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County 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 County shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Third Party Beneficiaries. The County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Use of County Facilities. Contractor and its employees or agents shall have the right to use only those facilities of the County that are necessary to perform the services under this Contract and shall have no right of access to any facility of the County without prior approval of County Administration. County shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents which may be stored on County premises.

Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

DIAGRAM A

