

SECTION ONE - GENERAL TERMS AND CONDITIONS

ARTICLE I - TERMS AND APPLICABILITY:

This document sets out provisions generally applicable to contracts with the Department of Agriculture as defined in COMAR Title 21. 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 of the agreement, and special conditions if any. Specific terms used in this document have the following definitions:

- (1) "Basic Agreement" means the executed document to which the general conditions contained herein are appended and incorporated.
- (2) "Contract" means the direct contractual relation between the Department and the Contractor including all terms and conditions contained herein and in the Basic Agreement.
- (3) "Contractor" means the person, firm, corporation or other entity obligated to perform services for the Department under this Contract.
- (4) "Department" means the Maryland Department of Agriculture and any Unit herein.
- (5) "Scope of Work" or "Work" refers to the specific contractual obligation of the Contractor, as identified in the Basic Agreement, Proposal, or other work statement incorporated into the Contract.

ARTICLE II - INDEPENDENT CONTRACTOR:

The Contractor is not an employee of the Department but is an independent contractor as that term is normally defined. The Contractor shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due in relation to the Contract. The Contractor is not an agent of the Department or the State of Maryland, and cannot commit the Department or the State to any expenditure of funds, or enter into any contractual obligation on behalf of the Department or the State.

ARTICLE III - MODIFICATIONS TO SCOPE OF WORK:

The Department, by written direction to the Contractor, may make additions and changes within the general subject matter of this Contract. Within fifteen (15) days of receipt of a Notice of Change, the Contractor shall advise the Department of the effect, if any, such changes would have on budgeting, cost, delivery schedules, milestones or any other Contract provisions. If such effects are acceptable to the Department, the Department shall issue a Notice to Proceed With Changes, upon receipt of which, the Contractor shall immediately institute all such requested changes. Such directed additions or changes to the Scope of Work shall

become part of the contractual obligation.

ARTICLE IV - CONTRACT REPRESENTATIVES:

The contract representatives of each party, as identified in the Basic Agreement, shall have authority to render any decision or take any action which the contracting party could so do under the Contract. Service of any notice required by the Contract shall be complete upon mailing of such notice, postage prepaid, to the appropriate contract representative at the address indicated. If no contract representative is named, then the person executing the Contract for a party shall be the contract representative.

ARTICLE V - DELAYS AND EXTENSIONS OF TIME:

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

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

ARTICLE VI - MARYLAND SAVED HARMLESS:

The Contractor will be responsible for all damage to life and property due to its activities, or those of its agents, employees, or subcontractors, in connection with its performance under this Contract, and will be responsible for all work, both permanent and temporary, until all services under this Contract are declared accepted by the Department.

The Contractor shall indemnify and save harmless and defend the State of Maryland and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the Contractor or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

ARTICLE VII - RETENTION OF RECORDS - AUDIT:

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

ARTICLE VIII - SUBLETTING OR ASSIGNING OF CONTRACTS:

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided the personnel of any such successor, whether such successor be an individual, a partnership or a corporation, is acceptable to the Department. The Contractor shall not hire consultants, sublet, sell, transfer, assign or otherwise dispose of this Contract in any portion thereof or of its right, title or interest therein, without prior written consent of the Department.

In the case of any subcontract, the Contractor agrees to bind the Subcontractor and every Subcontractor agrees to be bound by all terms of this Contract unless particular provisions are expressly waived in writing by the Department.

ARTICLE IX - ACCIDENT PREVENTION:

The Contractor shall at all times exercise such precautions as may be necessary for the safety of its employees during the course of performance of this Contract, and shall comply with all applicable federal, state, and local safety laws and regulations.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES:

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

ARTICLE XI - NON-DISCRIMINATION:

(1) The Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, natural origin, ancestry, or disability of a qualified individual with a disability.

(2) The Contractor agrees to include in a provision similar to that found in paragraph (1), above, in any subcontract except a subcontract for standard

commercial supplies or raw materials.

(3) The contractor agrees to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth the substance of this clause.

ARTICLE XII - SANCTIONS UPON IMPROPER ACTS:

In the event the Contractor, or any of its officers, partners, principals or employees, is convicted of a crime arising out of or in connection with the procurement, performance, or payment of this Contract, the Contract shall, in the discretion of the Department, be terminated without liability. Such sanction shall be applicable, as appropriate and in the discretion of the Department to any such conviction during, or after the expiration of, the term of the Contract.

ARTICLE XIII - NON-HIRING OF STATE OFFICIALS AND EMPLOYEES:

No official or employee of the State of Maryland, as defined under State Government Article, ' 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

ARTICLE XIV - DISPUTES:

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

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

(3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(4) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.

(5) When a claim cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

(6) The Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(7) The procurement officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim; unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.

(8) The procurement officer's decision shall be final and conclusive unless the Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(9) Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the procurement officer's decision.

ARTICLE XV - TERMINATION FOR DEFAULT:

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State 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 State's option, become the State's property. The State 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 State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

ARTICLE XVI - TERMINATION FOR CONVENIENCE OF THE STATE:

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the

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

ARTICLE XVII - ORDER TO TEMPORARILY STOP OR DELAY PERFORMANCE:

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

ARTICLE XIII - CORPORATE CERTIFICATION:

If the Contractor is incorporated, this Contract shall be accompanied by an executed CONTRACT AFFIDAVIT as required by COMAR 21.07.01.

ARTICLE XIX - MULTI-YEAR RESTRICTION:

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State 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 State 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.

ARTICLE XX - COST AND PRICE CERTIFICATION: (Applicable to contracts and contract modifications if the contract or modification exceeds \$100,000 or a smaller amount determined by the Procurement Officer.)

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

price discussions or negotiations for:

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

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

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

ARTICLE XXI - EFFECTIVE DATE:

It is understood and agreed by the parties hereto that this Contract and any modification thereof shall not become effective or enforceable until executed by the Department, after appropriate State approvals.

ARTICLE XXII - SEVERABILITY:

It is understood and agreed by the parties hereto that if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the said particular state, county, or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

ARTICLE XXIII - LAW APPLICABLE:

This Contract shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any question arising hereunder.

The Contractor will observe and comply with all federal, state, and local laws and ordinances that affect, in connection with this Contract, the work to be performed, those employed or engaged in connection therewith, any material or equipment used, or the conduct of the work itself; and will procure and bear the expense of all necessary licenses, permits, and insurance.

ARTICLE XXIV - FINANCIAL DISCLOSURE BY PERSONS DOING

BUSINESS IN THE STATE:

The Contractor shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership in the business.

ARTICLE XXV - PAYMENT OF STATE OBLIGATION:

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, or the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

ARTICLE XXVI - POLITICAL CONTRIBUTION DISCLOSURE:

The Contractor shall comply with Election Law Article, ' ' 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year under which a person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, or an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after execution of a lease or contract, the twice a year, throughout the contract term, on (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

ARTICLE XXVII - NOTICE OF PREEXISTING REGULATIONS:

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

applicable to this Contract.

ARTICLE XXVIII - COMPLIANCE WITH LAWS:

The Contractor hereby represents and warrants that:

(1) 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;

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

(3) It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

(4) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

