



1241 N FRANKLIN PLACE
MILWAUKEE WI 53202
WILL-LAW.ORG
414.727.9455

March 16, 2026

Secretary Sean Duffy
Administrator Sean McMaster
Deputy Administrator Jay Payne
U.S. Department of Transportation
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

New York Governor Kathy Hochul
NYSDOT Commissioner Dominguez
50 Wolf Road
Albany, NY 12232

Indiana Governor Mike Braun
INDOT Commissioner Lyndsay Quist
100 North Senate Avenue
Indianapolis, IN 46204

Massachusetts Governor Maura Healey
MassDOT Interim Secretary Phillip Eng
10 Park Plaza, Suite 4160
Boston, MA 02116

Maryland Governor Wes Moore
MDOT Acting Secretary Katie Thomson
7201 Corporate Center Drive
Hanover, MD 21076

**Re: Title VI Complaints Against Federally Funded State Agencies Still
Employing Race-Based Quotas: New York, Massachusetts, Maryland,
and Indiana**

Dear Secretary Duffy *et al.*,

I represent Contractors for Equal Opportunity (CEO), a nationwide membership association of road builders that seek equal treatment under the law. I am also Vice President and Deputy Counsel at the Wisconsin Institute for Law & Liberty (WILL), which obtained the landmark ruling against USDOT's Disadvantaged Business Enterprise (DBE) program. *Mid-American Milling, Inc. (MAMCO) v. USDOT*, No. 3:23-CV-00072-GFVT, 2024 WL 4635430 (E.D. Ky. Oct. 31, 2024).

Please consider this letter a formal complaint against the New York State Department of Transportation (NYSDOT), Massachusetts Department of Transportation (MassDOT), Maryland Department of Transportation (MDOT), and the Indiana Department of Transportation (INDOT) under Title VI of the Civil Rights Act of 1964. Each of these agencies is a recipient of federal financial assistance that discriminates based on race.

As you are aware, on October 3, 2025, USDOT published its Interim Final Rule (IFR) removing all race- and sex-based presumptions from the federal DBE and Airport Concession (DBE) programs. On behalf of CEO, I have closely monitored state compliance with the IFR. The good news is that with respect to federally funded

programs (with a few minor exceptions), state DOTs appear to be complying by removing all race- and sex-based DBE goals.

One troubling exception has been some state DOTs continuing to use racial goals through state-based Minority Business Enterprise (MBE) programs. States seem to believe that because certain projects are entirely state funded, the IFR does not apply and these discriminatory MBE goals may be enforced. But states cannot circumvent federal law simply by using state tax dollars. State DOTs are not only subject to the IFR, but they are also subject to Title VI, which prohibits discrimination “on the ground of race, color, or national origin” “under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Troublingly, many of these race-based goals are being used on projects to repair federal highways, such as interstate highways and other US highways, bridges, and tunnels.

We are asking you to investigate the following four state departments that discriminate based on race in violation of Title VI.

New York State Department of Transportation

NYSDOT is a recipient of federal financial assistance. NYSDOT receives approximately \$6.9 billion a year from USDOT and assures the public that it complies with Title VI.

NYSDOT imposes race-based goals on state-funded highway projects. For example, in its notice of letting for April 16, 2026, NYSDOT advertised three separate projects with an MBE goal. The notice provides as follows:

D265782, PIN 3B1616, Cayuga, Cortland, Onondaga, Oswego, Seneca, Tompkins Cos., REQUIREMENTS - HIGHWAY WORK ZONE TRAFFIC CONTROL- Various Locations., Bid Deposit: 5% of Bid (~ \$75,000.00), Goals: MBE: 5.00%, WBE: 10.00%, SDVOB: 6.00%.

D265773, PIN 547034, Erie Co., HIGHWAY RESURFACING PROJECT - Route NY 198, Scajaquada Expressway, City of Buffalo., No Plans, Bid Deposit: 5% of Bid (~ \$200,000.00), Goals: MBE: 7.00%, WBE: 11.00%, SDVOB: 6.00%

D265764, PIN 881571, Columbia, Dutchess, Orange, Putnam, Rockland, Ulster, Westchester Cos., REQUIREMENTS - Regionwide Signals Contract, Various Locations., Bid Deposit: 5% of Bid (~ \$75,000.00), Goals: MBE: 5.00%, WBE: 10.00%, SDVOB: 6.00%.

See Exhibit A.

Massachusetts Department of Transportation

MassDOT receives approximately \$1.6 billion a year from USDOT in federal financial assistance. MassDOT assures the public that it complies with Title VI.

MassDOT imposes race-based goals on state-funded highway projects. For example, on March 4, 2026, MassDOT issued a notice to prospective bidders establishing an 8% M/WBE goal on a pavement project. The notice provides as follows:

M/WBE PARTICIPATION GOAL On this Contract, the Massachusetts Department of Transportation (MassDOT) has established a goal for participation by Minority or Women Business Enterprise(s) (M/WBE). One half of the goal shall be met in the form of contractor activity. This goal shall remain in effect throughout the life of the Contract.

Design-Bid-Build Projects: M/WBE Participation Goal 8%.

See Exhibit B. In January 2026, MassDOT also listed another resurfacing project (Proposal No. 614260-133345) which contained an M/WBE participation goal of 9%. *See Exhibit C.*

Maryland Department of Transportation

MDOT receives approximately \$1.4 billion a year from USDOT in federal financial assistance. MDOT assures the public that it complies with Title VI.

MDOT imposes race-based goals on its state-funded highway projects. For example, on December 10, 2025, MDOT issued an invitation for bids for a project on several significant highways, tunnels, and bridges, including the Francis Scott Key Bridge (FSK), the Baltimore Harbor Tunnel, and the JFK Memorial Highway. The notice states as follows:

MINIMUM MBE GOALS: Five percent (5%).

See Exhibit D. On December 16, 2025, MDOT noticed another highway maintenance project. The notice states as follows:

The bidder shall seek commitments from minority business enterprises by subcontracting and/or procurement of materials and/or services, the combined value of which equals or exceeds the established Contract goal of 14 percent of the total value of the prime Contract.

See Exhibit E.

Indiana Department of Transportation

INDOT is a recipient of federal financial assistance. INDOT receives approximately \$1.4 billion a year from FHWA. INDOT assures USDOT that it complies with Title VI.

Despite this, INDOT imposes race-based goals on its highway projects, even projects to improve or repair federal highways. For example, on February 11, 2026, INDOT let contract number R-45581-A for the Fort Wayne District. The project is pavement patching for a segment of Interstate 69 in Huntington County, Indiana. Although the project does not contain DBE goals in violation of the IFR, the project contains explicit race- and sex-based goals. The notice provides as follows:

MBE, WBE AND IVOSB GOALS: Contract provisions goals of 7.00 percent of the contract bid price for the MBE goal, 5.00 percent of the contract bid price for the WBE goal and 3.00 percent of the contract bid price for the IVOSB goal have been established as the minimum amount for contracting to minority, women and Indiana veteran business enterprises.

See Exhibit F. Later in the contract documents, INDOT states that it is “committed to participation of Minority and Women’s Business Enterprises, MWBE, in the State’s procurement and contracting process.”

This is not the only example of INDOT imposing MBE goals recently. On the “Official Tabulation of Bids” for the January 14, 2026 Letting, INDOT imposed 7% MBE goals for resurfacing projects on US Highway 31, Interstate 74, and Interstate 65 (all federal highways). *See* Exhibit G.

Because of these goals, at least one member of CEO could not bid on a project. The state DOTs’ apparent defense is that these projects are funded only with state tax dollars. But that is irrelevant under Title VI. Once a state DOT receives federal financial assistance, Title VI applies to all operations of the entire department, including projects solely funded with state tax dollars. According to the United States Department of Justice, “when any part of a state or local government department or agency is extended federal financial assistance, the entire agency or department is covered.... Moreover, the part of the program or activity that receives assistance can be, and often is, distinct from the part that engages in the allegedly discriminatory conduct.” USDOJ has made clear that it is irrelevant whether a particular construction project itself involves federal financial assistance, because the term ‘program or activity’ broadly encompasses the entire agency.

Moreover, the state DOT can no longer hide behind “disparity studies” and other claims of attempting to remedy past discrimination with MBEs. State MBEs are

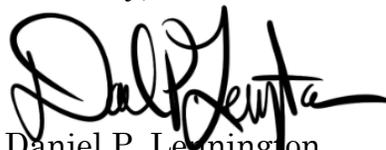
modeled on the former DBE program, and it is the position of the federal government that such programs are unconstitutional.¹ Disparity studies simply showing differences in utilization are not precise measures of specific instances of intentional race discrimination committed by a governmental agency, and therefore insufficient to form the basis of a race-based remedy. *See Students for Fair Admission, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023). Moreover, MBE programs are unconstitutional because they use “arbitrary,” “overbroad,” and “underinclusive” racial categories, they use race as a “negative” and “stereotype,” and have no “logical end point.” *Id.* at 213-221; *see MAMCO, supra*.

I sincerely appreciate your review and investigation of these states under Title VI. These states will not change their behavior without pressure from USDOT. For example, I attempted to work this out separately with INDOT, but in my last email to them, they refused to answer me, claiming only that I must file a public-records request for relevant information related to their compliance with federal law.

I look forward to your investigation. CEO and WILL greatly appreciate all the work done to make contracting fair and equal by you and the entire Trump Administration.

Additionally, this complaint is submitted in furtherance of President Trump’s Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (January 21, 2025), which directs all executive departments and agencies to terminate all discriminatory and illegal race-based preferences, mandates, policies, programs, and activities and to enforce our longstanding civil-rights laws—including vigorous investigation and enforcement of Title VI violations by recipients of federal financial assistance.

Sincerely,



Daniel P. Lenington
Vice President & Deputy Counsel
Wisconsin Institute for Law & Liberty

¹ *See* USDOJ Letter to Congress, June 25, 2025, available here: <https://www.justice.gov/oip/media/1404871/dl?inline>.

NOTICE OF HIGHWAY LETTINGS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

50 WOLF RD - ALBANY, NY 12232

4 WEEK ADVERTISEMENT FOR THE LETTING OF April 16, 2026

Electronic documents issued for the below project(s) will be
available on **March 18, 2026**

Bids should be submitted through Bid Express (www.bidx.com) or in a sealed envelope
addressed to:

**NYS Department of Transportation
Office of Contract Management
50 Wolf Road, First Floor, Suite 1CM
Albany, NY 12232**

Mark the envelope 'Bid Enclosed'. Clearly identify the Company Name, Street Address, Federal Identification Number, Project Number and Project Description on the envelope. The same Federal Identification number must be used on the envelope and the planholder list.

Every bid must be accompanied by a bid bond, certified check or bank cashier's check payable to the NYS Department of Transportation, in the sum of the amount shown on the proposal title page. Bonds must be on form CONR 391. Electronic bids must include an electronic bid bond.

Electronic documents and Amendments are posted to <http://www.dot.ny.gov/doing-business/opportunities/const-notices>. **For information or questions concerning contract documents call Plan Sales at (518) 457-2124.**

The Contractor is responsible for ensuring that all Amendments are incorporated into its bid. To receive notification of Amendments via e-mail you must submit a request to be placed on the Planholders List at <http://www.dot.ny.gov/doing-business/opportunities/const-planholder>. Amendments may have been issued prior to your placement on the Planholders list.

NYS Finance Law restricts communication with NYSDOT on procurements and contact can only be made with designated persons. Contact with non-designated persons or other involved Agencies will be considered a serious matter and may result in disqualification.

The Department's Civil Rights reporting software is EBO (the Equitable Business Opportunity Solution). To be in compliance with the contract requirements for NYS Civil Rights reporting, it is recommended that all Bidders and subcontractors have an active EBO account. Vendors/Sponsors can access an EBO application as well as Login & Password information using the following Link: <https://www.dot.ny.gov/dotapp/ebo/instructions>.

Additionally, effective January 1, 2020 for Federal Aid projects, bidders are required to submit DBE Commitments with their bids.

Project related technical questions or comments must be submitted through the Construction Contracting section of the NYSDOT Business Center on the NYSDOT website at: <http://www.dot.ny.gov/doing-business/opportunities/const-notices>. Contract administration or procurement questions may be submitted either through the website or directed to Robert Kitchen, or the Assistant Director/Director of the Office of Contract Management, (518) 457-2124.

Please call (518) 457-2124 if a reasonable accommodation is needed to participate in the Letting.



BIDDERS SHOULD BE ADVISED THAT AWARD OF THESE CONTRACTS MAY BE CONTINGENT
UPON THE PASSAGE OF A BUDGET APPROPRIATION BILL BY THE LEGISLATURE AND
GOVERNOR OF THE STATE OF NEW YORK.

Reg. 03, New York State Department of Transportation, 333 E. Washington St., State Office Bldg., Syracuse, NY, 13202

D265711, PIN 380787, FA Proj , Cortland Co., BRIDGE PAINTING - Various Routes, Towns of Cortlandville, Harford and Virgil., Bid Deposit: 5% of Bid (~ \$125,000.00) , Goals: DBE: 0.00%

D265767, PIN 328724, FA Proj , Onondaga Co., RESURFACING - Route 931G & Route 370, Oswego Street from South Willow Street to Tulip Street, Village of Liverpool., Bid Deposit: 5% of Bid (~ \$200,000.00) , Goals: DBE: 0.00%

D265782, PIN 3B1616, Cayuga, Cortland, Onondaga, Oswego, Seneca, Tompkins Cos., REQUIREMENTS - HIGHWAY WORK ZONE TRAFFIC CONTROL- Various Locations., Bid Deposit: 5% of Bid (~ \$75,000.00) , Goals: MBE: 5.00%, WBE: 10.00%, SDVOB: 6.00%

Reg. 05, New York State Department of Transportation, 100 Seneca Street, Buffalo, NY, 14203

D265773, PIN 547034, Erie Co., HIGHWAY RESURFACING PROJECT - Route NY 198, Scajaquada Expressway, City of Buffalo., No Plans, Bid Deposit: 5% of Bid (~ \$200,000.00) , Goals: MBE: 7.00%, WBE: 11.00%, SDVOB: 6.00%

Reg. 08, New York State Department of Transportation, 4 Burnett Blvd., Poughkeepsie, NY, 12603

D265764, PIN 881571, Columbia, Dutchess, Orange, Putnam, Rockland, Ulster, Westchester Cos., REQUIREMENTS - Regionwide Signals Contract, Various Locations., Bid Deposit: 5% of Bid (~ \$75,000.00) , Goals: MBE: 5.00%, WBE: 10.00%, SDVOB: 6.00%

Reg. 09, New York State Department of Transportation, 44 Hawley Street, Binghamton, NY, 13901

D265765, PIN 9CWS01, FA Proj , Broome, Chenango, Delaware, Otsego, Schoharie, Sullivan, Tioga Cos., HIGHWAY SIGN INSTALLATION - Various Locations, Bid Deposit: 5% of Bid (~ \$200,000.00) , Goals: DBE: 0.00%

6 Contract(s)

Federally Aided Contracts identify a DBE Goal, and 100% NY State Funded Contracts identify MBE, WBE, and SDVOB Goals. Contracts with 0% Goals are generally single operation contracts, where sub-contracting is not expected, and smaller size contracts -- both of which may present direct bidding opportunities for Small Business Firms, including, but not limited to, DBE, MBE, WBE or SDVOB.

The New York State Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted

programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

LASGADR

THIS PAGE IS INTENTIONALLY LEFT BLANK

① Addendum No. 1, March 4, 2026

DOCUMENT 00010

TABLE OF CONTENTS

DOCUMENT 00010
TABLE OF CONTENTS.....00010-1 through 2

DOCUMENT 00102
NOTICE TO CONTRACTORS.....00102- 1 through 2

DOCUMENT 00210
REQUIREMENTS OF MASSACHUSETTS GENERAL
LAWS CHAPTER 30 SECTION 39R; CHAPTER 30, SECTION 39O00210-1 through 4

DOCUMENT 00331
LOCUS MAP00331-1 through 2

DOCUMENT 00439
CONTRACTOR PROJECT EVALUATION FORM.....00439-1 through 2

DOCUMENT 00440
SUBCONTRACTOR PROJECT EVALUATION FORM00440-1 through 2

DOCUMENT 00710
GENERAL CONTRACT PROVISIONS00710-1 through 2

DOCUMENT 00715
SUPPLEMENTAL SPECIFICATIONS.....00715-1 through 10

① DOCUMENT 00718
SPECIAL PROVISION FOR PARTICIPATION BY MINORITY OR WOMEN'S
BUSINESS ENTERPRISES AND SERVICE- DISABLED VETERAN- OWNED
BUSINESS ENTERPRISES00718-1 through 10

DOCUMENT 00761
SPECIAL PROVISIONS FOR CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION00761-1 through 4

DOCUMENT 00811
MONTHLY PRICE ADJUSTMENT FOR HOT MIX ASPHALT
(HMA) MIXTURES.....00811-1 through 2

DOCUMENT 00812
MONTHLY PRICE ADJUSTMENT FOR DIESEL FUEL AND GASOLINE00812-1 through 2

DOCUMENT 00813
PRICE ADJUSTMENT FOR STRUCTURAL STEEL
AND REINFORCING STEEL00813-1 through 4

DOCUMENT 00814
PRICE ADJUSTMENT FOR PORTLAND CEMENT CONCRETE MIXES00814-1 through 2

DOCUMENT 00820
THE COMMONWEALTH OF MASSACHUSETTS
SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY,
NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.....00820-1 through 6

DOCUMENT 00821
ELECTRONIC REPORTING REQUIREMENTS
CIVIL RIGHTS PROGRAM AND CERTIFIED PAYROLL00821-1 through 2

DOCUMENT 00859
CONTRACTOR/SUBCONTRACTOR CERTIFICATION FORM00859-1 through 2

① Addendum No. 1, March 4, 2026

TABLE OF CONTENTS (Continued)

DOCUMENT 00860
COMMONWEALTH OF MASSACHUSETTS PUBLIC EMPLOYMENT LAWS..... 00860-1 through 2

DOCUMENT 00861
STATE PREVAILING WAGE RATES..... 00861-1 through 34

DOCUMENT A00801
SPECIAL PROVISIONS..... A00801-1 through 50

DOCUMENT A00820
REQUEST FOR RELEASE OF MASSDOT AUTOCAD FILES FORM A00820-1 through 2

DOCUMENT A00875
POLICY DIRECTIVE P-22-001 AND POLICY DIRECTIVE P-22-002..... A00875-1 through 8

DOCUMENT B00420
PROPOSAL B00420-1 through 6

① DOCUMENT B00842
SCHEDULE OF PARTICIPATION BY MINORITY OR WOMEN BUSINESS
ENTERPRISE (M/WBE)..... B00842-1 through 2

① DOCUMENT B00843
MINORITY OR WOMENS BUSINESS ENTERPRISE PARTICIPATION
LETTER OF INTENT B00843-1 through 2

① DOCUMENT B00846
M/WBE OR SDVOBE JOINT CHECK ARRANGEMENT APPROVAL FORM..... B00846-1 through 2

① DOCUMENT B00847
JOINT VENTURE AFFIDAVIT B00847-1 through 4

*** END OF DOCUMENT ***

① Addendum No. 1, March 4, 2026

NOTICE TO CONTRACTORS (Continued)

All parties who wish to have access to information plans and specification must send a “Request for Informational Documents” to MassDOTBidDocuments@dot.state.ma.us.

A Proposal Guaranty in the amount of 5% of the value of the bid is required.

This project is subject to the schedule of prevailing wage rates as determined by the Commissioner of the Massachusetts Department of Labor and Workforce Development, and the Division of Occupational Safety.

PRICE ADJUSTMENTS

- ① This Contract contains price adjustments for hot mix asphalt and Portland cement mixtures, diesel fuel, and gasoline. For reference the base prices are as follows: liquid asphalt \$615.00 per ton, Portland cement \$425.13 per ton, diesel fuel \$2.805 per gallon, and gasoline \$2.145 per gallon, and Steel Base Price Index 373.6. MassDOT posts the **Price Adjustments** on their Highway Division’s website at <https://www.mass.gov/massdot-contract-price-adjustments>

This Contract contains Price Adjustments for steel. See Document 00813 - PRICE ADJUSTMENT FOR STRUCTURAL STEEL AND REINFORCING STEEL for their application and base prices.

MassDOT projects are subject to the rules and regulations of the Architectural Access Board (521 CMR 1.00 et seq.)

Prospective bidders and interested parties can access this information and more via the internet at WWW.COMMBUYS.COM.

BY: Phillip Eng, Interim MassDOT Secretary
Jonathan L. Gulliver, Undersecretary and Highway Administrator
SATURDAY, FEBRUARY 14, 2026

DOCUMENT 00718

SPECIAL PROVISION FOR PARTICIPATION BY MINORITY OR WOMEN'S BUSINESS ENTERPRISES
AND SERVICE- DISABLED VETERAN- OWNED BUSINESS ENTERPRISES

(Implementing Chapter 102, Section 24 and
Chapter 273, Section 124, of the Acts of 1994 and Chapter 56, Sections 1 to 5 of the Acts of 2010
and subsequent Acts)

Revised: September 27, 2021

I. PARTICIPATION

M/WBE PARTICIPATION GOAL

On this Contract, the Massachusetts Department of Transportation (MassDOT) has established a goal for participation by Minority or Women Business Enterprise(s) (M/WBE). One half of the goal shall be met in the form of contractor activity. This goal shall remain in effect throughout the life of the Contract.

Design-Bid-Build Projects: M/WBE Participation Goal 8%
(One half of this goal shall be met in the form of Subcontractor construction activity)

Design-Build Projects: M/WBE Design Participation Goal ___% and M/WBE
Construction Participation Goal ___%
(One half of the Construction Goal shall be met in the form of Subcontractor
construction activity)

SDVOBE PARTICIPATION BENCHMARK

On this Contract, the Massachusetts Department of Transportation (MassDOT) has established a goal for participation by Service- Disabled Veteran- Owned Business Enterprise(s) (SDVOBE). This goal shall remain in effect throughout the life of the Contract.

Design-Bid-Build Projects: SDVOBE Participation Goal ___%

Design-Build Projects: SDVOBE Design Participation Goal ___% and SDVOBE
Construction Participation Goal ___%

II. POLICY

It is the policy of the MassDOT that Minority, Women Business Enterprises (M/WBEs) and Service- Disabled Veteran- Owned Business Enterprises (SDVOBEs) have equal opportunity to receive and participate in the performance of its state funded Contracts.

III. M/WBE and SDVOBE OBLIGATION

The Contractor agrees to take all necessary and reasonable steps to ensure that MBE, WBE, and SDVOBEs have the maximum opportunity to compete for, and to perform, Department Contracts.

IV. FAILURE TO COMPLY WITH M/WBE OR SDVOBE REQUIREMENTS

All Contractors and Subcontractors are hereby advised that failure to carry out the requirements of these Provisions constitutes a breach of Contract which may result in termination of the Contract, a determination that the Contractor or Subcontractor be barred from bidding on Department Contracts for up to three (3) years, or any other remedy as the Department may impose under Section XIV of these Special Provisions.

V. REQUIRED SUBCONTRACT PROVISIONS

The Prime Contractor shall include the Provisions of Sections II, III, and IV above in every subcontract making those provisions binding on each subcontractor, supplier, manufacturer, consultant or service provider.

VI. DEFINITIONS

For the purpose of these Special Provisions, the terms listed below are defined as follows:

Minority Business Enterprise or MBE means any individual, business organization, or non-profit corporation certified as a MBE by the Supplier Diversity Office (SDO), formerly known as the State Office of Minority and Women Business Assistance (SOMWBA), or by the Department for the purposes of a particular bid or proposal to be submitted to the Department.

Women Business Enterprise or WBE means any individual, business or organization, or non-profit corporation certified as a WBE by SDO, or by the Department for the purposes of a particular bid or proposal to be submitted to the Department.

Service- Disabled Veterans- Owned Businesses or SDVOBE means a business not less than 51 percent of which is owned by one or more service- disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and the management and daily business operations of which are controlled by one or more service- disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

"Contractor activity" means any work, including but not limited to, construction, demolition, renovation, survey, test boring services, or maintenance work performed under the Contract.

"Approved Joint Venture" means a joint venture between M/WBEs and non-M/WBEs, or SDVOBEs and non-SDVOBEs, which has been established for the purpose of participation on a particular contract, where:

1. The M/WBE or SDVOBE partner(s) shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
2. The Joint Venture has been approved by the Department for M/WBE or SDVOBE participation on the particular contract.

"Equipment Rental Firm" means a firm that owns equipment and assumes actual and contractual responsibility to rent said equipment to perform a useful function of the work of the contract consistent with normal industry practice.

"Material Supplier" means a vendor engaged in sales to the highway construction industry from an established place of business or source of supply, which:

- (a) Manufactures goods from raw materials or substantially alters them before resale, or
- (b) Provides and maintains a storage facility for materials used in the work, consistent with normal industry practice.

"Department" means the Massachusetts Department of Transportation (MassDOT).

"SDO" means the Massachusetts Supplier Diversity Office.

VII. ELIGIBILITY of M/WBEs

Only firms, *OTHER THAN THE PRIME CONTRACTOR*, which have been certified by SDO and/or the Department as eligible to participate on state funded contracts as MBEs or WBEs may be used on this contract for credit toward the toward the M/WBE participation goal.

1. SDO Directory of Certified M/WBEs: The Supplier Diversity Office publishes a Directory of certified MBE and WBEs. This Directory can be obtained from SDO at <https://www.sdo.osd.state.ma.us/>. This site lists those firms which have been certified as minority owned (MBEs) or women owned (WBEs) in accordance with the criteria of 425 CMR 2.00 et seq to participate as M/WBEs on state funded contracts. It also lists the kinds of work in which each firm engages but does not constitute an endorsement of the quality or performance of any business and does not represent Department subcontractor approval.
2. Application for Certification by the Department for a Particular Project: A firm which has (1) submitted a fully completed M/WBE application to SDO at least 30 days previously, (2) has provided in a timely manner, any additional information which may have been requested by SDO, and (3) can provide evidence, satisfactory to the Department, of a bidder's conditional commitment to subcontract with the firm, if certified, may apply directly to the MassDOT Office of Civil Rights to be certified for participation on the particular contract.
3. Joint Venture Approval: To obtain recognition as an approved joint venture between M/WBEs and non-M/WBEs, the Joint Venture must provide to the MassDOT Office of Civil Rights, at least 14 business days before the bid opening date, the Joint Venture Affidavit Document B00847, and a copy of the Joint Venture Agreement, which shall include a detailed breakdown of the following:
 - (a) Capital participation by the M/WBE,
 - (b) Specific equipment to be provided to the Joint Venture by the M/WBE,
 - (c) Specific responsibilities of the M/WBE in the management of the Joint Venture,
 - (d) Workforce and specific skills to be provided to the Joint Venture by the M/WBE, and
 - (e) Percentage distribution to the M/WBE of the projected profit or loss incurred by the Joint Venture.
 - (f) The Joint Venture shall provide all such additional information as may be requested by the Department for the purpose of determining joint venture eligibility.

VIII. ELIGIBILITY of SDVOBEs

Only firms, *OTHER THAN THE PRIME CONTRACTOR*, which have demonstrated that they are listed as a service-disabled veteran- owned small businesses within the VetBiz database may be used on this contract for credit toward the SDVOBE participation goal.

1. VetBiz Database: The website, located at www.VetBiz.gov, listing verified service- disabled veteran- owned businesses.
2. Joint Venture Approval: To obtain recognition as an approved joint venture between SDVOBEs and non-SDVOBEs, the joint venture must provide to the MassDOT Office of Civil Rights, at least 14 business days before the bid opening date, an application for joint venture participation approval, and a copy of the Joint Venture Agreement, which shall include a detailed breakdown of the following:
 - (a) Capital participation by the SDVOBE,
 - (b) Specific equipment to be provided to the joint venture by the SDVOBE,
 - (c) Specific responsibilities of the SDVOBE in the management of the Joint Venture,
 - (d) Workforce and specific skills to be provided to the joint venture by the SDVOBE, and

- (e) Percentage distribution to the SDVOBE of the projected profit or loss incurred by the Joint Venture.
- (f) The Joint Venture shall provide all such additional information as may be requested by the Department for the purpose of determining joint venture eligibility.

IX. COUNTING M/WBE PARTICIPATION AND SDVOBE BENCHMARKS TOWARDS M/WBE AND SDVOBE GOALS

In order for M/WBE participation and SDVOBE benchmarks to count toward the Contract goal, the M/WBE and SDVOBE must have independently managed, supervised and performed the Contract work with its own workforce, equipment and resources. M/WBE and SDVOBE participation which fulfills these requirements shall be counted toward meeting the M/WBE and SDVOBE goals in accordance with the following rules:

1. If a firm has been determined to be an eligible MBE, WBE or SDVOBE, the total dollar value of the contract performed by the M/WBE or SDVOBE is counted toward the applicable goal as follows:
 - a. Except as provided below, in Section IX (1)(g), work performed by a M/WBE or a SDVOBE Prime Contractor shall not be counted toward the M/WBE or SDVOBE goal, and all Prime Contractors, including M/WBE or SDVOBE Prime Contractors, must comply with the M/WBE and SDVOBE requirements of this Contract.
 - b. For a M/WBE or SDVOBE material supplier, sixty percent (60%) of the amount to be paid for materials and supplies required under this Contract shall be credited toward the goal.
 - c. For a M/WBE or SDVOBE who provides a bonafide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, reasonable fees or commissions charged for the service shall be listed, but the cost of items themselves shall not be credited.
 - d. For a M/WBE or SDVOBE hauler, trucker, or delivery service, which is not also the manufacturer of or a regular dealer in the materials and supplies, reasonable fees charged for delivery of materials and supplies required on the job site shall be credited; the cost of the materials and supplies themselves shall not be credited.
 - e. For a M/WBE or SDVOBE who provides any bonds or insurance specifically required for the performance of the contract, reasonable fees or commissions charged for such service shall be listed, but the face amount or actual premium paid for the bond or insurance shall not be credited.
 - f. The Department shall determine if the fees or commissions listed in accordance with paragraphs (c), (d), and (e) are not excessive as compared with fees or commissions customarily allowed for similar services.
 - g. That portion of the contract total dollar value equal to the percentage of ownership and control of the M/WBE partner(s) or SDVOBE partner(s) in an approved Joint Venture shall be counted toward the Contract goal, except that credit for M/WBE and SDVOBE participation in an approved Prime Joint Venture shall not exceed one half of the Contract goal.

X. JOINT CHECK POLICY

1. MassDOT recognizes that the use of joint checks may be a business practice required by material suppliers and vendors in the construction industry. A joint check is a two-party check issued by a/the Prime Contractor to a M/WBE or SDVOBE third party such as a regular dealer of material or supplies. The Prime Contractor issues the check as payor to the M/WBE or SDVOBE and the third party jointly as payees to guarantee payment to the third party for materials or supplies obtained or to be used by the M/WBE or SDVOBE. MassDOT has established criteria to ensure that M/WBEs or SDVOBEs are in fact performing a commercially useful function ("CUF") while using a joint check arrangement. Contractors and M/WBEs or SDVOBEs must meet and conform to these conditions and criteria governing the use of joint checks.

2. In the event that a Contractor, M/WBE or SDVOBE Subcontractor desires to use a joint check, MassDOT will require prior notice and will closely monitor the arrangement for compliance. MassDOT may allow a joint check arrangement and give credit to a Contractor for use of the M/WBE or SDVOBE where one or more of the following conditions exist:
 - The use of a joint check is in fact required by this type of vendor or supplier as a standard industry practice that applies to all Contractors (M/WBEs, SDVOBE and non-M/WBEs or non-SDVOBEs); or is required by a specific vendor or supplier;
 - Payment for supplies or materials would be delayed for an unreasonably extended period without the joint check arrangement;
 - The M/WBE or SDVOBE (or any of its Subcontractors) has a pattern or history of not paying a vendor or supplier within a reasonable time or has not established enough of a credit history with the supplier or vendor; and/or
 - The presence of severe adverse economic conditions, where credit resources may be limited and such practices may be necessary or required to effect timely payments.
3. Other factors MassDOT may consider:
 - Whether there is a requirement by the Prime Contractor that a M/WBE or SDVOBE should use a specific vendor or supplier to meet their Subcontractor specifications;
 - Whether there is a requirement that a M/WBE or SDVOBE use the Prime Contractor's negotiated price;
 - The independence of the M/WBE or SDVOBE;
 - Whether approval has been sought prior to use of a joint check arrangement; and
 - Whether any approved joint check arrangement has exceeded a reasonable period of use;
 - The operation of the joint check arrangement; and
 - Whether the M/WBE or SDVOBE has made an effort to establish alternate arrangements for following periods (i.e., the M/WBE or SDVOBE must show it can, or has, or why it has not, established or increased a credit line with the vendor or supplier).

Even with the use of a Joint Check, both the Contractor and M/WBE or SDVOBE remain responsible for compliance with all other elements of the Special Provisions, and must still be able to prove that a commercially useful function is being performed for the Contractor.

XI. JOINT CHECK PROCEDURES

- The M/WBE or SDVOBE advises its General or Prime Contractor that it will have to use a Joint Check and provide proof of such requirement.
- The General or the Prime Contractor submits a request for approval to MassDOT, using MassDOT's approved Joint Check Request form (Document B00846) and by notification on the M/WBE Letter of Intent (Document B00843) or SDVOBE Letter of Intent (Document B00845), and any other relevant documents. Requests that are not initiated during the bid process should be made in writing and comply with the procedure.
- The Contractor and M/WBE or SDVOBE must have:
 - (a) a written agreement with the material supplier/vendor;
 - (b) applied for credit with the subject material supplier and has supplied the vendor's response;

- (c) shown that it will place all orders to the subject material supplier/vendor;
 - (d) made and retains all decision-making responsibilities concerning the materials; and
 - (e) provided a Joint Check Agreement that is acceptable to MassDOT;
- The MassDOT Office of Civil Rights will review the request and render a decision as part of the approval process for M/WBE or SDVOBE Schedules and Letters of Intent.
 - Review and Approval will be project specific and relevant documents will be made part of the Project Contract file.
 - Payments should be made in the name of both the M/WBE or SDVOBE and vendor or supplier. Payments should be issued and signed by the Contractor as only the guarantor for prompt payment of purchases to the vendor or supplier. The payment to the vendor or supplier should be handled by the M/WBE or SDVOBE (i.e. if possible, funds or the joint check should be processed by the M/WBE or SDVOBE and sent by the M/WBE or SDVOBE to the vendor or supplier).
 - MassDOT may request copies of cancelled checks (front and back) and transmittal information to verify any payments made to the M/WBE or SDVOBE and vendor or supplier.
 - MassDOT may request other information and documents, and may ask questions of the Contractor, Subcontractor and vendor or supplier prior to, during, and after the project performance to ascertain whether the Subcontractor is performing a commercially useful function and all parties are complying with M/WBE or SDVOBE Program policies and procedures as part of the Subcontractor approval process.

XII. AWARD DOCUMENTATION AND PROCEDURES

1. The two lowest bidders/the two bidders with the lowest price per quality score point, including any M/WBE bidder or SDVOBE bidder, shall submit, by the close of business on the third business day after the bid opening, a completed Schedule of M/WBE and SDVOBE participation, in the form attached, which shall list:
 - a. The full company name, address and telephone number of each M/WBE or SDVOBE with whom the bidder intends to make a commitment;
 - b. The Contract item(s), by number(s) and quantity(ies), if applicable, or specific description of other business activity to be performed by each M/WBE or SDVOBE as set forth in the Letters of Intent. The bidder shall list only firms which have the capacity to perform, manage and supervise the work proposed in accordance with the requirements of Section XII of these Special Provisions.
 - c. The total dollar amount to be paid to each M/WBE or SDVOBE. (Bidders are cautioned that at least one half of the participation goal must be met with Contract work.)
 - d. The total dollar amount to be paid to each M/WBE or SDVOBE which is eligible for credit toward the M/WBE or SDVOBE goal under the crediting rules set out in Section IX.
 - e. The total creditable M/WBE or SDVOBE participation as a percentage of the total bid price.
2. All firms listed on the Schedule must be currently certified.
3. The two lowest bidders/the two bidders with the lowest price per quality score point shall submit with their Schedules of Participation, fully completed, signed Letters of Intent from each of the M/WBEs or SDVOBEs listed on the Schedule. The Letters of Intent shall be in the form attached and shall identify specifically the contract activity the M/WBE or SDVOBE proposes to perform, expressed as contract item number, if applicable, description of the activity, quantity, unit price and total price. In the event of discrepancy between the Schedule and the Letter of Intent, the Letter of Intent shall govern.

4. Evidence of good faith efforts will be evaluated by the Department in the selection of the lowest responsible bidder/best value bidder. All information requested by the Department for the purpose of evaluating the bidder's efforts to achieve the goal must be provided within three calendar days and must be accurate and complete in every detail. The apparent low bidder's/best value bidder's attainment of the M/WBE or SDVOBE goal or a satisfactory demonstration of good faith efforts is a prerequisite for Award of the Contract.
5. Failure to meet, or to demonstrate good faith efforts to meet, the requirements of these Special Provisions shall render a bid non-responsive. Therefore, in order to be eligible for award, the bidder (1) must list on the Schedule of Participation, and provide the required Letters of Intent for, M/WBE or SDVOBE participation which meets or exceeds the Contract goal in accordance with the terms of these Special Provisions or (2) must demonstrate, to the satisfaction of the Department, that good faith efforts were made to achieve the goal.
6. If the Department finds that the percentage of M/WBE or SDVOBE participation submitted by the bidder on its Schedule does not meet the Contract goal, or that the Letters of Intent were not timely filed, and that the bidder has not demonstrated good faith efforts to comply with these requirements, it shall propose that the bidder be declared ineligible for Award. In that case, the bidder may request administrative reconsideration. Such requests must be sent in writing within three calendar days of receiving notice of proposed ineligibility to: The Office of the General Counsel, Massachusetts Department of Transportation, 10 Park Plaza, Boston, MA, 02116.
7. If, after administrative reconsideration, the Department finds that the bidder has not shown that sufficient good faith efforts were made to comply with the requirements of these Special Provisions it shall reject the bidder's proposal and may retain the proposal guaranty.
8. Actions which constitute evidence of good faith efforts to meet the M/WBE or SDVOBE goals include, but are not limited to, all of the following examples:
 - a. Efforts made to select portions of the work proposed to be performed by M/WBEs or SDVOBEs in order to increase the likelihood of achieving the stated goal, including, where appropriate, but not limited to, breaking down contracts into economically feasible units to facilitate M/WBE and SDVOBE participation. The value of such work is required to at least equal the M/WBE and SDVOBE goal.
 - b. Reasonable written notification prior to the opening of bids soliciting individual M/WBEs or SDVOBEs interested in participation in the contract as subcontractors, regular dealers, manufacturers, consultants, or service providers and identifying the specific items or type of work being solicited.
 - c. Written notification to M/WBE or SDVOBE economic development assistance agencies and organizations which provide assistance in recruitment and placement of M/WBEs and SDVOBEs, describing the type of work, supplies or services being considered for M/WBE or SDVOBE subcontracting on this contract.
 - d. Efforts made to negotiate with M/WBEs or SDVOBEs for specific items of work including evidence of:
 - (1) The names, addresses, telephone numbers of M/WBEs or SDVOBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacts with M/WBEs or SDVOBEs to determine with certainty whether the M/WBEs or SDVOBEs were interested. Personal or phone contacts are expected.
 - (2) A description of the information provided by the M/WBEs or SDVOBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed.
 - (3) A statement of why additional agreements with M/WBEs or SDVOBEs were not reached.
 - (4) Documentation of each M/WBE or SDVOBE contacted but rejected and the reasons for the rejection.
 - e. Absence of any agreements between the Contractor and the M/WBE or SDVOBE in which M/WBE or SDVOBE promises not to provide subcontracting quotations to other bidders.
 - f. Efforts made to assist the M/WBEs or SDVOBEs that need assistance in obtaining bonding, insurance, or lines of credit required by the Contractor.

- g. Documentation that qualified M/WBEs or SDVOBEs are not available, or are not interested.
 - h. Attendance at any meeting scheduled by the Department to encourage better Contractor-M/WBE or Contractor- SDVOBE relationships and/or to inform M/WBEs or SDVOBEs of forthcoming M/WBE or SDVOBE utilization opportunities.
 - i. Advertisement, in general circulation media, in trade association publications and in disadvantaged business enterprise-focused media, of interest in utilizing M/WBEs or SDVOBEs and the area of interest.
 - j. Efforts to effectively use the services of available minority community organizations; women organizations, veteran organizations, minority, women disadvantaged and veteran contractor's groups; local, state and federal disadvantaged business assistance offices; and other organizations that provide assistance in recruitment and placement of M/WBEs or SDVOBEs.
9. The demonstration of good faith efforts must establish that the Contractor has actively and aggressively sought out M/WBEs or SDVOBEs to participate in the project and has taken all actions which could be reasonably expected to achieve the goal. Examples of circumstances or actions not acceptable as reasons for failure to meet the M/WBE or SDVOBE goal, include, but are not limited to:
- a. The M/WBE or SDVOBE was unable to provide performance and/or payment bonds.
 - b. The M/WBEs or SDVOBEs commercially reasonable bid was rejected based on price.
 - c. The M/WBE or SDVOBE would not agree to perform items of work at the unit bid price.
 - d. The Contractor does not want to subcontract a percentage of the work sufficient to meet the goal.
 - e. Solicitation by mail or fax only.

XIII. COMPLIANCE

1. All activity performed by a M/WBE or SDVOBE for credit toward the Contract goal must be performed, managed and supervised by the M/WBE or SDVOBE. Prime Contractor shall not enter into, or condone, any other arrangement.
2. The Prime Contractor shall not perform with its own organization, or assign to any other business, any activity designated for the M/WBEs or SDVOBEs named on the Schedule submitted by the Prime Contractor under Section IX, or under Section XII(6), without the approval of the Department in accordance with the requirements of Sections XIII(6) and XIII(10).
3. The Department may suspend payment for any activity which was not performed by the M/WBE or SDVOBE to whom the activity was committed on the approved Schedule of Participation, or which was not performed in accordance with the requirements of Section XIII(1).
4. The Department retains the right to approve or disapprove all subcontractors. Requests by the Prime Contractor for approval of participation by a M/WBE or SDVOBE subcontractor for credit toward the Contract goal must include, in addition to any other requirements for subcontractor approval, the following:
 - a. A copy of the proposed subcontract. The subcontract must be for at least the dollar amount, and for the work described, in the Prime Contractor's Schedule of Participation.
 - b. A resume stating the qualifications and experience of the M/WBE or SDVOBE superintendent and/or foreperson who will supervise the on-site work. A new resume will be required for any change in supervisory personnel during the progress of the work.
 - c. A Schedule of Operations indicating when the M/WBE or SDVOBE is expected to perform the work.

- d. A list of (1) equipment owned by the M/WBE or SDVOBE to be used on the Project, and (2) equipment to be leased by the M/WBE or SDVOBE for use on the Project.
 - e. A list of: (1) all projects (public and private) which the M/WBE or SDVOBE is currently performing, (2) all projects (public and private) to which the M/WBE or SDVOBE is committed, (3) all projects (public and private) to which the M/WBE or SDVOBE intends to make a commitment. For each contract, list the contracting organization, the name and telephone number of a contact person for the contracting organization, the dollar value of the work, a description of the work, and the M/WBEs or SDVOBEs work schedule for each project.
5. If, pursuant to the subcontractor approval process, the Department finds that a M/WBE or SDVOBE subcontractor does not have sufficient experience or resources to perform, manage and supervise work of the kind proposed in accordance with the requirements of Section XIII(1), approval of the M/WBE or SDVOBE subcontractor may be denied. In the event of such denial, the Prime Contractor shall proceed in accordance with the requirements of Sections XIII(6) and XIII(10).
 6. If, for reasons beyond its control, the Prime Contractor cannot comply with its M/WBE or SDVOBE commitment in accordance with the Schedule of participation submitted under Section IX and the terms of these Special Provisions, the Prime Contractor shall submit to the Department the reasons for its inability to comply with its obligations under Section I and shall submit, and request approval for, a revised Schedule of Participation. If approved by the Department, the revised Schedule shall govern the Prime Contractor's performance in meeting its obligations under these special provisions.
 7. A Prime Contractor's compliance with the participation goal in Section I shall be determined by reference to the required percentage of the total Contract price, including any additions and modifications thereto, provided, however, that no decrease in the dollar amount of a bidder's commitment to any M/WBE or SDVOBE shall be allowed without the approval of the Department.
 8. If the Contract amount is increased, the Prime Contractor shall submit a revised Schedule of Participation in accordance with Sections XIII(6) and XIII(10).
 9. In the event of the decertification of a M/WBE or SDVOBE participating or scheduled to participate on the contract for credit toward the goal, the Contractor shall proceed in accordance with Sections XIII(6) and XIII(10).
 10. The Prime Contractor shall notify the Department immediately of any facts which come to its attention indicating that it may or will be unable to comply with any aspect of its M/WBE or SDVOBE obligation under this Contract.
 11. Any notice required by these Special Provisions shall be given in writing to the Resident Engineer and the district designated Compliance Officer with a copy to the Director of Compliance, Office of Diversity and Civil Rights, 10 Park Plaza, Room 3170, Boston MA 02116.
 12. The Prime Contractor and its subcontractors shall comply with the Department's Electronic Reporting System Requirements (Contract Document 00821) and submit all information required by the Department related to the M/WBE Special Provisions and SDVOBE Special Provisions through the Equitable Business Opportunity Solution (EBO). The Department reserves the right to request reports in the format it deems necessary anytime during the performance of the Contract.
 13. The Contractor shall pay each M/WBE or SDVOBE for satisfactory performance of its Contract no later than 10 days from receipt of payment for the work from the Department. Any delay or postponement of payment to the M/WBEs or SDVOBEs must be for good cause and only with the prior approval of the Department.
 14. The Department may withhold the Contractor's next periodic payment if each M/WBE or SDVOBE is not paid in accordance with Section XIII(13).
 15. The Department may require specific performance of the Prime Contractor's commitment under the Contract by requiring the Prime Contractor to subcontract with a M/WBE or SDVOBE for any contract or specialty item.

XIV. SANCTIONS

If the Prime Contractor does not comply with the terms of these Special Provisions and cannot demonstrate to the satisfaction of the Department that good faith efforts were made to achieve such compliance, the Department may, in addition to any other remedy provided for in the Contract, and notwithstanding any other provision in the Contract:

1. Retain, in connection with final acceptance and final payment, an amount determined by multiplying the total contract amount by the percentage in Section I, less the amount paid to approved M/WBEs or SDVOBEs for work performed under the Contract in accordance with the provisions of Section X. The Prime Contractor shall have the right to appeal such retention of funds in accordance with the provisions of M.G.L. c. 30A s.10.
2. Suspend, terminate or cancel this Contract, in whole or in part, and call upon the Prime Contractor's surety to perform all terms and conditions in the Contract.
3. In accordance with 720 CMR 5.05(1)(f), modify or revoke the Prime Contractor's Prequalification status or recommend that the Prime Contractor not receive award of a pending Contract. The Prime Contractor may appeal the determination of the Prequalification Committee in accordance with the provisions of 720 CMR 5.07.
4. Initiate debarment proceedings under M.G.L. c.29 §29F.

XV. FURTHER INFORMATION

Any proposed M/WBE, SDVOBE, bidder, Contractor or subcontractor shall provide such information as is necessary in the judgement of the Department to ascertain its compliance with the terms of this Special Provision.

XVI. LIST OF ADDITIONAL DOCUMENTS

1. The following documents shall be completed and signed by the bidder and designated M/WBEs or SDVOBEs in accordance with Section XII - Award Documentation and Procedures. These documents must be returned by the bidder to MassDOT's Bid Document Distribution Center:
 - Schedule of M/WBEs (Document B00842) or SDVOBE Participation (Document B00844)
 - Letter of Intent: M/WBEs (Document B00843) or SDVOBE (Document B00845)
 - M/WBEs or SDVOBE Joint Check Arrangement Approval Form (Document B00846), if Contractor and M/WBE or SDVOBE plan, or if M/WBE or SDVOBE is required to use a Joint Check (when applicable)
2. The following document shall be signed and returned by Contractor and Subcontractors/M/WBEs or SDVOBEs to the MassDOT District Office overseeing the Project, as applicable:
 - Contractor/Subcontractor Certification Form (Document No. 00859) (a checklist of other documents to be included with every subcontract (M/WBEs or SDVOBEs and non-M/WBEs or SDVOBEs alike)).
3. The following document shall be provided to MassDOT's Office of Civil Rights and Prequalification Office at least fourteen (14) business days before the bid opening date:
 - Joint Venture Affidavit of M/WBE or SDVOBE/Non-M/WBE or Non-SDVOBE (Document B00847)
4. The following document shall be provided to MassDOT's District Office of Civil Rights within 30 calendar days after the work of the M/WBE is completed, or no later than 30 calendar days after the work of the M/WBE is on a completed and processed CQE. This document shall be completed and submitted by the Prime Contractor:
 - Certificate of Completion by a Minority/Women or Disadvantaged Business Enterprise (M/WBE) (Form No. CSD-100)

** END OF DOCUMENT **

DOCUMENT 00718

SPECIAL PROVISION FOR PARTICIPATION BY MINORITY OR WOMEN'S BUSINESS ENTERPRISES
AND SERVICE- DISABLED VETERAN- OWNED BUSINESS ENTERPRISES

(Implementing Chapter 102, Section 24 and
Chapter 273, Section 124, of the Acts of 1994 and Chapter 56, Sections 1 to 5 of the Acts of 2010
and subsequent Acts)

Revised: September 27, 2021

I. PARTICIPATION

M/WBE PARTICIPATION GOAL

On this Contract, the Massachusetts Department of Transportation (MassDOT) has established a goal for participation by Minority or Women Business Enterprise(s) (M/WBE). One half of the goal shall be met in the form of contractor activity. This goal shall remain in effect throughout the life of the Contract.

Design-Bid-Build Projects: M/WBE Participation Goal 9 %
(One half of this goal shall be met in the form of Subcontractor construction activity)

Design-Build Projects: M/WBE Design Participation Goal ___% and M/WBE
Construction Participation Goal ___%
(One half of the Construction Goal shall be met in the form of Subcontractor
construction activity)

SDVOBE PARTICIPATION BENCHMARK

On this Contract, the Massachusetts Department of Transportation (MassDOT) has established a goal for participation by Service- Disabled Veteran- Owned Business Enterprise(s) (SDVOBE). This goal shall remain in effect throughout the life of the Contract.

Design-Bid-Build Projects: SDVOBE Participation Goal ___%

Design-Build Projects: SDVOBE Design Participation Goal ___% and SDVOBE
Construction Participation Goal ___%

II. POLICY

It is the policy of the MassDOT that Minority, Women Business Enterprises (M/WBEs) and Service- Disabled Veteran- Owned Business Enterprises (SDVOBEs) have equal opportunity to receive and participate in the performance of its state funded Contracts.

III. M/WBE and SDVOBE OBLIGATION

The Contractor agrees to take all necessary and reasonable steps to ensure that MBE, WBE, and SDVOBEs have the maximum opportunity to compete for, and to perform, Department Contracts.

IV. FAILURE TO COMPLY WITH M/WBE OR SDVOBE REQUIREMENTS

All Contractors and Subcontractors are hereby advised that failure to carry out the requirements of these Provisions constitutes a breach of Contract which may result in termination of the Contract, a determination that the Contractor or Subcontractor be barred from bidding on Department Contracts for up to three (3) years, or any other remedy as the Department may impose under Section XIV of these Special Provisions.

Exhibit
C

**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSPORTATION AUTHORITY**

Baltimore, Maryland

Invitation for Bids

PART A

**BALTIMORE HARBOR TUNNEL THRUWAY (BHT), FORT MCHENRY TUNNEL (FMT)
FRANCIS SCOTT KEY BRIDGE (FSK), GOVERNOR HARRY W. NICE
MEMORIAL/SENATOR THOMAS “MAC” MIDDLETON BRIDGE (HWN / NICE BRIDGE)
INTERCOUNTY CONNECTOR MD200 (ICC), JOHN F. KENNEDY MEMORIAL
HIGHWAY(JFK), POINT BREEZE OFFICE COMPLEX
THOMAS J. HATEM MEMORIAL BRIDGE (TJH), US40, and
WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE (WPL / BAY BRIDGE)**



**Maryland
Transportation
Authority**

Contract No. MR-3042-0000

**ON-CALL UPGRADE AND REPLACE METAL TRAFFIC
BARRIERS AND ATTENUATORS**

**ANNE ARUNDEL COUNTY, BALTIMORE CITY, BALTIMORE COUNTY, CECIL
COUNTY, CHARLES COUNTY, HARFORD COUNTY, HOWARD COUNTY,
MONTGOMERY COUNTY, PRINCE GEORGE’S COUNTY, AND QUEEN ANNE’S
COUNTY**

**Exhibit
D**

2020 VERSION 1.0 DRAFT 4 – December 29, 2021



Maryland Transportation Authority

On-Call Upgrade and Replace Metal Traffic Barriers and Attenuators

Contract No. MR-3042-0000

Invitation for Bids
KEY INFORMATION SUMMARY SHEET

CONTRACT NO.: MR-3042-0000

eMMA SOLICITATION: BPM051885

TITLE: On-Call Upgrade and Replace Metal Traffic Barriers and Attenuators

FACILITY: Baltimore Harbor Tunnel Thruway (BHT), Fort McHenry Tunnel (FMT), Francis Scott Key Bridge (FSK), Governor Harry W. Nice Memorial/Senator Thomas “MAC” Middleton Bridge (HWN / Nice Bridge), Intercounty Connector MD200 (ICC), John F. Kennedy Memorial Highway (JFK), Point Breeze Office Complex, Thomas J. HATEM Memorial Bridge (TJH), US40/MD222, William Preston Lane Jr. Memorial Bridge (WPL / Bay Bridge)

COUNTY: Anne Arundel County, Baltimore City, Baltimore County, Cecil County, Charles County, Harford County, Howard County, Montgomery County, Prince George’s County, and Queen Anne’s County

ADVERTISED: December 10, 2025 (Approx.)

PRE-BID MEETING: January 8, 2026, 10:00am Local Time, 2310 Broening Highway, Baltimore, MD 21224, 1st Floor Susquehanna Conference Room

SITE VISIT: None

QUESTIONS DUE DATE January 22, 2026, by 4:00pm local time

PROCUREMENT OFFICER: Robert Usher
Phone # 410-537-7836
E-mail: rusher@mdta.state.md.us

BIDS ARE TO BE SENT TO: www.bidx.com

BID DUE DATE AND TIME: February 18, 2026 12:00pm local time

CLASSIFICATION: Class - F (\$5,000,001 to \$10,000,000)

PROJECT TIME: 1095 Calander Days

LIQUIDATED DAMAGES: **MBE Liquidated Damages – See Section CP-3**
Project Liquidated Damages – See Section GP-8.09

MINIMUM MBE GOALS: Five percent (5%)



STATE HIGHWAY
ADMINISTRATION

Maryland Department of Transportation

*State Highway Administration
Baltimore, Maryland
Invitation for Bids*

Contract No. AW7766514

**MAINTENANCE AND EMERGENCY REPAIRS ON
MOVABLE BRIDGES**

STATEWIDE

Disadvantaged/ Minority Business Enterprises are encouraged to respond to this Solicitation Notice.

The State Highway Administration will only be responsible for the completeness of documents, including all addenda, obtained directly from BidX.com.

Failure to complete the Addendum Receipt Verification Form may cause the bid to be irregular.

VENDOR I.D. NUMBER

S.H.A. USE ONLY





STATE HIGHWAY
ADMINISTRATION

Maryland Department of Transportation

*State Highway Administration
Baltimore, Maryland
Invitation for Bids*

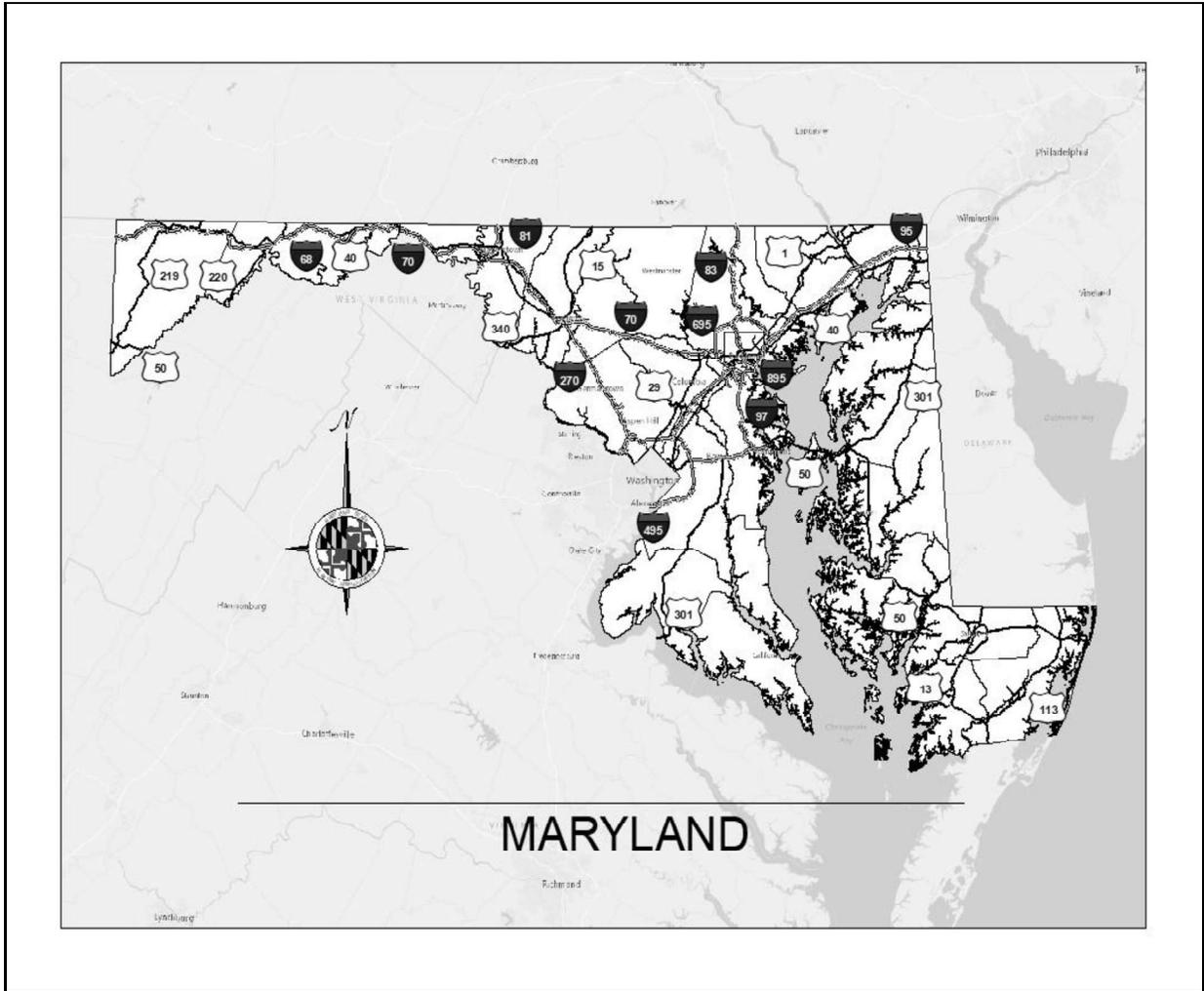
Contract No. AW7766514

**MAINTENANCE AND EMERGENCY REPAIRS ON
MOVABLE BRIDGES**

STATEWIDE

NOTICE TO BIDDERS

A "Pre-Bidding Session" will not be held for this contract.



SCALE: NONE

LOCATION MAP

COUNTY

"I/We hereby certify that any clearing, grading, construction, and/or development will be done pursuant to this plan and that any responsible personnel involved in the construction project will have a certificate of attendance at a Maryland Department of the Environment approved training program for the control of erosion and sediment before beginning the project."

"I hereby authorize the right of entry for periodic on-site evaluation by State of Maryland, Department of the Environment, compliance inspectors."

REVIEWED AND
APPROVAL RECOMMENDED

DATE

Rod Thornton 10/30/2025
DEPUTY DIRECTOR, OFFICE OF STRUCTURES

APPROVAL RECOMMENDED

DATE

Mauricio Agostino 10/30/2025
DIRECTOR, OFFICE OF STRUCTURES

APPROVED

DATE

Sutapa Samanta 11/03/2025
CHIEF ENGINEER

TABLE OF CONTENTS

Invitation for Bids.....Cover
Location and Signature Sheet (for Contracts without Plans)..... i
Table of Contents ii

CONTRACT PROVISIONS

CP - Electronic Bidding
 Instructions and Requirements for Electronic Bidding1
CP - Contractor Registration Requirement.....3
CP - MdMUTCD Requirements.....4
CP - (NCHRP) Report 350 and MASH Implementation Schedule.....5
CP - Occupying Wetlands7
CP – Summary of Minority Business Enterprise Research Factors8
CP – Affirmative Action Requirements Utilization of MBE For Straight State Contracts.....9
CP –Notice to Contractors-Concerning MBE Goal On This Contract.....19
CP –MBE Dual Certification.....20
CP –Apprenticeship Training Fund.....21
CP –MBE Compliance Field Meeting.....26
CP - Traffic Control Plan Certification27
CP - Prevailing Wage Instructions For The Contractor28
CP - Wage Rates32
CP - Notice Of Actions For Affirmative Action
 Contractor Affirmative Action Program104
CP - High Visibility Apparel Policy112

TABLE OF CONTENTS

SPECIAL PROVISIONS

SP - Project Description, Specifications, and Employment Agency114

SP – Notice to Contractor117

SP – Environmental Programs Division Letters - Approval Exemption for Stormwater and Sediment Control.....125

SP – Best Management Practices - Wetlands126

TERMS AND CONDITIONS

SP – GP - Section 8 – Prosecution and Progress

 8.01 Subcontracting.....127

SP - Section 6 – Restrictions and Permits

 6.06 Bridges and Other Work In or Over Waters of the State.....128

SP – TC-4.02 – Failure to Maintain Project129

SP – TC-7.08 – Eliminated Items

 TC Section 7 - Payment.....130

CATEGORY 100 PRELIMINARY

SPI - Section 104 - Maintenance of Traffic (MOT)131

SPI - Section 104 - Maintenance of Traffic (MOT) - General132

SP - Section 104 - Maintenance of Traffic (MOT)

 104.01 Traffic Control Plan (TCP).....133

SP - Section 104 Maintenance of Traffic

 104.08 – Temporary Traffic Signs (TTS).....138

SPI - Section 104 - Maintenance of Traffic

 104.12 - Drums for Maintenance of Traffic139

SPI - Section 104 - Maintenance of Traffic

 104.14 - Cones for Maintenance of Traffic140

SPI - Section 104 - Maintenance of Traffic

 104.23 - Protection Vehicle (PV)141

TABLE OF CONTENTS

SPI - Section 105 – Aggregate For Maintenance of Traffic
105.04 – Measurement and Payment.....143

CATEGORY 300 DRAINAGE

SP - Section 308 – Erosion and Sediment Control144
SP - Section 308 – Erosion and Sediment Incentive Disincentive181

CATEGORY 400 STRUCTURES

SP - Section 460 – Metal Structures182
SP - Section 460 – Expansion Joints in Structures183
SP - Section 482 – Turbidity Curtain185
SP - Section 497 – Concrete Protective Coating System187
SP - Section 400 – Fiber Reinforced Polymer Protective and Strengthening Systems190
SP - Section 400 – Pigeon Protective Netting195
SP - Section 400 – Maintaining Underclearance Beneath Bridge Construction197
SP - Section 400 – Labor for Structure Preservation and Minor Rehabilitation198
SP - Section 400 – Equipment for Structure Preservation and Minor Rehabilitation209
SP - Section 400 – Material for Structure Preservation and Minor Rehabilitation212
SP - Section 400 – Specialized Equipment for Structure Preservation and Minor
Rehabilitation213
SP - Section 400 – Subcontractors for Structure Preservation and Minor Rehabilitation ...217

CATEGORY 875 UTILITIES

SP - Section 875 - Utilities Statement218

TABLE OF CONTENTS

CATEGORY 900 MATERIALS

SP - Section 911 - Joints.....270

ELECTRONIC BIDDING
INSTRUCTIONS AND REQUIREMENTS FOR ELECTRONIC BIDDING

Electronic Bidding Documents

All bidding documents referred herein that discuss paper or hardcopy submittals are to be construed to mean electronically submitted.

Contract Documents

The Administration will continue to post advertisements of projects on the eMaryland Marketplace Advantage (eMMA) website, an electronic commerce system administered by the Maryland Department of General Services, located at <https://emma.maryland.gov>. All associated contract materials, including the solicitation notices, summaries of pre-bid meetings, bidder's questions and the Procurement Officer's responses, addenda, and other solicitation related information will no longer be provided on eMMA. These materials will only be available on the Bid Express website located at <http://www.bidx.com/maryland/main>, and will continue to be available at no charge. However, in order to be awarded a Contract, bidders must still be registered on eMMA. The registration on eMMA is free. Should you have any questions regarding registration, please call the eMMA Help Desk at 410-767-1492.

Bidders must use the electronic bid forms provided by the Administration to submit bids. The Bid Proposal forms are available on the Bid Express website. Paper bids will not be accepted for this contract. It is the bidder's responsibility to download the complete official Bid Proposal Form ('.ebsx' file) and any amendment files ('.NUMx') associated with that specific Bid Proposal Form. Amendment files ('.NUMx') are posted to the Bid Express website when there is a change to the Bid Proposal Form, including a letting date change. The Administration is not liable for the bidder's failure to download the complete contract documents, the official Bid Proposal Form ('.ebsx' file) or the amendment files ('.NUMx').

Bid Preparation

AASHTOWare Project Bids™ Bid Component software is required to view, prepare and submit bids (proposal form packets) electronically. This software is available for download and use at no charge at <https://bids.cloverleaf.net/>. Training material and detailed instructions to "Set Up Internet Bidding" are available within the "AASHTOWare Project Bids™ – Flash Guides" through the Bid Express Training Center at: <https://www.bidx.com/site/trainingcenter>.

Bid Submittal – Registration and Paid Subscription are Required

In order to submit bids, bidders must: designate an individual to submit bids on behalf of the bidding entity, register with Bid Express, during registration select Maryland Department of Transportation as the referring Agency, have a paid subscription to electronically submit bids via the Internet Bidding Service, obtain an Info Tech Digital ID and request to bid in Maryland. The designated individual must be authorized, pursuant to the effective legal documents of the bidding entity, to sign and submit binding legal documents on behalf of the bidding entity. Note that there are fees to generate an ID for monthly Internet bidding.

Payment of a Bid Express subscription is required to submit a bid. For current fee schedules please visit https://www.infotechfl.com/legal/fee_schedule. All fees are payable to Bid Express. Potential bidders are encouraged to register in advance with Bid Express as the registration process and the Digital ID creation takes at least 7 business days. For more information about Bid Express registration and subscription, please visit <https://www.bidx.com/site/registration>. Bidders may

CONTRACT PROVISIONS

CONTRACT NO. AW7766514

INSTRUCTIONS AND REQUIREMENTS FOR ELECTRONIC BIDDING

2 of 2

call or email the Bid Express Customer Support Team at 888-352-BIDX (2439) or at customer.support@bidx.com for assistance with registration.

All bids must be submitted to <https://www.bidx.com/maryland/main>. A bid extension will not be granted for delays in registration, for errors in submission of electronic bids or for unsuccessful or incomplete transmission of bids to Bid Express. Bid submittal shall be as specified in TC-2.05.

Bid Completeness and Accuracy

Bidders are solely responsible to review, understand and adhere to all bid instructions, requirements and specifications. Due to inherent limitations, the AASHTOWare Project Bids™ Bid Component software cannot identify all bid proposal errors and omissions. Bidders shall not rely on this software or the Bid Express website to identify errors and omissions in their bid proposal. Any feedback from the AASHTOWare Project Bids™ Bid Component software including, but not limited to, the green check marks and red exclamation marks does not validate, or otherwise indicate completeness or responsiveness of the bid proposal. Transmission of the bid proposal and selection of the appropriate MBE or DBE forms to Bid Express does not imply that the submitted bid package is free of errors and omissions or that the submitted bid is susceptible to award. Bidders are responsible for completeness and accuracy of their bid proposals and selection of the appropriate MBE or DBE forms.

Bid Security / Proposal Guaranty – Electronic Verification

Bid Express permits bidders to have electronic bid bond verification. The Administration will accept electronic bid bond verification. The two companies that provide electronic bid bond verification are Insure Vision and Surety 2000. For information on Insure Vision please visit <http://web.insurevision.com>. For information on Surety 2000 please visit <http://surety2000.com>. For additional information, see GP-2.07.

Bid Opening and Requirements.

Bid Opening shall be as specified in GP-2.13.

CONTRACT PROVISIONS
CONTRACTOR REGISTRATION REQUIREMENTS

CONTRACT NO. AW7766514
1 of 1

CONTRACTOR REGISTRATION REQUIREMENTS

Register in the System for Award Management (SAM) online at <https://www.sam.gov> prior to the time an offer is submitted for all Federal-Aid funded Contracts. The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is no fee to register for this site. User guides and webinars are available under the Help tab. Allow up to 12 to 15 business days after you submit before your registration is active in SAM.

CONTRACT PROVISIONS

CONTRACT NO. AW766514

MARYLAND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MDMUTCD)
REQUIREMENTS

1 of 1

NOTICE TO ALL HOLDERS OF THIS CONTRACT DOCUMENT

**MARYLAND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES
(MDMUTCD) REQUIREMENTS**

The 2011 Maryland Manual on Uniform Traffic Control Devices (MdmUTCD) is the legal State standard for traffic control devices. All traffic control devices (temporary or permanent) utilized on Administration projects shall be in conformance with the requirements provided in the 2011 Edition of the Administration's MdmUTCD for Streets and Highways.

NOTICE TO ALL HOLDERS OF THIS CONTRACT DOCUMENT

**NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM (NCHRP)
REPORT 350 AND THE MANUAL FOR ASSESSING SAFETY HARDWARE (MASH)
COMPLIANCE FOR DEVICES USED IN THE MAINTENANCE OF TRAFFIC AND
TRAFFIC CONTROL**

Except as otherwise specified in this section, all temporary and permanent highway safety features, including longitudinal barriers, transitions, end terminals, crash cushions, breakaway/yielding supports, truck-mounted attenuators, and work zone traffic control devices, shall meet values recommended when applicable tests are performed for evaluation criteria for the respective evaluation factors, as defined in NCHRP Report 350, or the MASH 2016, as noted herein. When conformance with NCHRP Report 350 or MASH 2016 is required, provide the Engineer with the manufacturers' certifications that the devices comply with the specified criteria. All temporary and permanent highway safety features shall comply with MASH 2016 criteria by the relevant dates noted below.

TEMPORARY INSTALLATIONS FOR MAINTENANCE OF TRAFFIC

The implementation dates below apply to temporary work zone roadside safety hardware and devices.

Temporary work zone devices, including Category 1, 2, 3 and 4 devices manufactured after 12/31/2019, when applicable, must be successfully tested to the 2016 edition of MASH. Relevant devices manufactured on or before 12/31/2019, and successfully tested to NCHRP 350, the 2009 edition of MASH, or otherwise authorized, may continue to be used.

Unless specifically waived in the Contract Documents, only devices approved on Qualified Product List by the Administration may be used.

Category 1 Devices

These devices include cones, tubular markers, flexible delineator posts, and drums, none of which have any accessories or attachments, and are used for channelization and/or delineation.

Category 2 Devices

These devices include Type I, II, and III barricades, portable sign supports with signs, intrusion alarms, and vertical panels. Category 1 devices, such as drums or cones, that are modified with accessories or attachments shall be considered Category 2 devices.

Category 3 Devices

- (a) Truck Mounted Attenuators (TMAs) and Trailer Truck Mounted Attenuators (TTMAs).
- (b) Temporary Barrier.
 - (1) Concrete Barrier.
 - (2) Traffic Barrier W-Beam and Water Filled Barrier.

CONTRACT PROVISIONS
(NCHRP) REPORT 350 AND MASH COMPLIANCE

CONTRACT NO. AW7766514
2 of 2

(3) Steel/Aluminum Barrier.

(c) Temporary End Treatments.

Category 4 Devices

These devices include area lighting supports, arrow panels, and portable variable message signs that may be portable or trailer-mounted.

Use of Category 4 devices shall comply with the provisions of Part 6 of the MD MUTCD.

PERMANENT ROADSIDE HARDWARE INSTALLATION

The implementation dates below apply to both new and replacement installations of roadside safety hardware on National Highway System (NHS) roadways except when a waiver is approved by FHWA

December 31, 2017: Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of W-beam barriers and cast-in-place concrete barriers as specified in Contract Documents.

June 30, 2018: Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of W-beam tangent terminals as specified in Contract Documents.

December 31, 2018: Contracts with bid openings after this date shall meet MASH 2016 testing criteria for all installations and replacements of crash cushions.

December 31, 2019: Contracts with bid openings after this date shall meet testing criteria as defined in MASH 2016 guidelines for all new permanent installations and full replacements of bridge rail, transitions, all other longitudinal barrier (including portable barriers installed permanently), other W-beam terminals (such as double-sided or median terminals, flared terminals, and terminals installed on a flare), sign supports, cable barrier, cable barrier terminals, all other terminals, and all other breakaway hardware as specified in Contract Documents.

OCCUPYING WETLANDS

The Contractor is hereby alerted to the importance of preserving wetland areas. The Administration, in conjunction with the various environmental agencies, has developed these Contract Documents so as to minimize or eliminate disturbance and damage to existing wetland areas. In order to accomplish this, the following must be rigidly adhered to:

- (a) Prior to performing any work on the project, the areas of wetland will be identified and marked as directed by the Administration. All personnel of the Contractor or sub-contractors shall be alerted to these designated areas.
- (b) The Contractor or sub-contractors shall not impact any wetland or waterway, whether it be permanently or temporarily unless otherwise stipulated in the permit application and approved as an authorized action by the appropriate regulatory agency. No fill shall be placed in these areas without a permit.
- (c) If a Contractor or sub-contractor has to impact a wetland or waterway that is not covered by an existing wetland permit, they shall immediately notify the Engineer. The Engineer will notify the Environmental Programs Division to determine the extent of any permit modification. At that time the Environmental Programs Division will request a permit modification or submit a permit application.
- (d) If the Contractor impacts any wetland or waterway for which they do not have a wetland permit, they shall be responsible for restoring the wetland areas and possibly mitigating the wetland impacts to the full satisfaction of the environmental agencies, which could include monetary compensation.
- (e) The cost of restoration and mitigation of the impacted areas shall be at no additional cost to the Administration.

The importance of not abusing the wetland areas cannot be overemphasized. Abuse of wetland areas could jeopardize the operation of the total Contract and could be cause for a shut-down. If a shut-down occurs because of the Contractor's failure to secure the required permits (i.e. the Contractor's method of work includes impacts not approved by previously acquired permits), the Contractor's negligence or operations, all costs and damages to the Contractor and to the State will be at no additional cost to the Administration. Noncompliance with these requirements will not be considered for an extension of Contract time.

CONTRACT PROVISIONS

CONTRACT NO. AW7766514

SUMMARY OF MINORITY BUSINESS ENTERPRISE RESEARCH FACTORS

1 of 1

SUMMARY OF MINORITY BUSINESS ENTERPRISE RESEARCH FACTORS

This Contract Provision serves as a summary of the factors the State used, in conjunction with guidance from the Governor’s Office of Small, Minority, and Women’s Business Affairs, to determine the expected degree of Minority Business Enterprise (MBE) participation for the procurement contract, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified MBEs in those industries.

This summary’s research results are not all inclusive and do not exclude any other subcontracting opportunities that the Bidder/Offeror may identify in preparing a Bid/Proposal to submit in response to this solicitation.

This method and format are to be used on all projects with MBE participation requirements. The information for the summary can be obtained from the PRG Worksheets. The Project Manager is responsible for filling out the table with the summary information.

Summary of MBE Research Factors

MBE Research by NAICS Code		
NAICS Codes	Description	# MBEs in MDOT Directory

**AFFIRMATIVE ACTION REQUIREMENTS UTILIZATION OF MINORITY
BUSINESS ENTERPRISES FOR STRAIGHT STATE CONTRACTS**
(where the Contractor's bid exceeds \$50,000)

A. General

For the purpose of these requirements, the following terms as defined below shall apply:

Administration Representative – A Minority Business Enterprise (MBE) Officer of an Administration who enforces the laws and regulations pertaining to minority business enterprise and Contract compliance.

Affirmative Actions – Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority businesses fully in contracts and programs.

Business Enterprises – A legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

Certified Business – A business which by order of the Chair/MBE Advisory Council or his/her designee, has been certified as a bona fide MBE.

Director, Office of Equal Opportunity – The individual designated for the Administration's overall MBE compliance.

Joint Venture – An association of a MBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Minority Business Enterprise (MBE) – Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote interests of the physically or mentally disabled.

MBE Directory – A compilation of businesses certified by MDOT as minority or socially and economically disadvantaged businesses. The directory will be published annually with quarterly supplements. It will also be provided in automated format and on the Internet to be updated as changes are made.

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
2 of 10

MBE Program – A program developed by MDOT to implement the requirements of Title 14, Subtitle 3, of the State Finance Procurement Article, Annotated Code of Maryland, and Title 10, Subtitle 3, of the State Finance Procurement Article, Annotated Code of Maryland, for Leases of State-Owned Property.

MBE Participation Packet – The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The MBE Participation Packet shall consist of the MBE Utilization Affidavit and the MBE Participation Schedule, both of which must be submitted with your bid or initial price proposal. The MBE Participation Packet also includes the following documents which are submitted after bids or proposals are opened: MDOT Outreach Efforts Compliance Statement, the MDOT MBE Subcontractor Project Participation Affidavit, the MDOT Joint Venture Disclosure Affidavit, and the Minority Contractor Unavailability Certificate. See all bid proposal documents at <https://www.mdot.maryland.gov/tso/pages/Index.aspx?PageId=39>. Under Stated Funded MBE Bid/Proposal Forms, as listed below:

Form A MDOT-OP 012-2/ MDOT MBE STATE FUNDED CONTRACTS
CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

Form B MDOT – OP 013-2/ MDOT MBE STATE FUNDED CONTRACTS
PART 1- INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE

Form C MDOT-OP 014-2/ MDOT MBE STATE FUNDED CONTRACTS
OUTREACH EFFORTS COMPLIANCE STATEMENT

Form D MDOT-OP 015-2/ MDOT MBE STATE FUNDED CONTRACTS
MBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT

Form E MDOT MBE/DBE GOOD FAITH EFFORTS GUIDANCE AND
DOCUMENTATION; PART 1 – GUIDANCE FOR DEMONSTRATING GOOD
FAITH EFFORTS TO MEET MBE/DBE PARTICIPATION GOALS

Form E MDOT MBE/DBE GOOD FAITH EFFORTS GUIDANCE AND
DOCUMENTATION; PART 2- CERTIFICATION REGARDING GOOD FAITH
EFFORTS DOCUMENTATION

Minority or Minority Person for Straight State Contracts - Member of one of the following socially and economically disadvantaged groups:

1. African American – An individual having origins in any of the Black racial groups of Africa;
2. American Indian/Native American – An individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
3 of 10

who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which he/she claims to be a part, but does not include and individual of Eskimo or Aleutian origin;

3. Asian – An individual having origins in the far East, Southeast Asia, or the Indian Subcontinent and who is regarded as such by the community of which the person claims to be a part;
4. Hispanic – An individual of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin regardless of race, and who is regarded as such by the community or which the person claims to be a part;
5. Women – This category shall include all women, regardless of race or ethnicity, although a woman who is also a member of an ethnic or racial minority group may elect that category in lieu of the gender category; or
6. Physically or Mentally Disabled – An individual who has an impairment that substantially limits one or more major life activity, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business.

B. MBE and Good Faith Effort Requirements

1. This contract includes an MBE participation goal for subcontracting, and/or procurement of materials, and/or services. Bidders/Offerors must make a good faith effort to meet the MBE participation goal **before bids or proposals are due**, including outreach efforts. A bid or initial proposal must include both a completed and executed Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule. The failure of a bidder to complete and submit the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule shall result in a determination that the bid is not responsive. The failure of an offeror to complete and submit the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule shall result in a determination that the proposal is not susceptible of being selected for award.
2. In making a good faith effort to achieve the MBE goal, prior to completing the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule and prior to submitting a bid or initial proposal bidders (or offerors), including those bidders or offerors that are certified MBEs, must:
 - a. Identify specific work categories within the scope of the procurement appropriate for subcontracting and/or procurement of materials and/or services;
 - b. **Solicit certified MBEs in writing at least 10 days before bids or initial proposals are due**, describing the identified work categories and providing instructions on how to bid on the subcontracts and/or procurement of materials and/or services;
 - c. Attempt to make personal contact with the certified MBEs solicited and to document these attempts;
 - d. Assist certified MBEs to fulfill, or to seek waiver of, bonding requirements; and
 - e. Attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to certified MBEs.

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
4 of 10

3. The bidder shall seek commitments from minority business enterprises by subcontracting and/or procurement of materials and/or services, the combined value of which equals or exceeds the established Contract goal of **14%** percent of the total value of the prime Contract. The Administration has further established that, within this Contract goal, there shall be a sub-goal of a minimum of **0%** percent participation by firms classified as African American-owned firms, a sub-goal of **0%** percent participation by firms classified as Woman-owned firms, a sub-goal of a minimum of **0%** percent participation by firms classified as Hispanic American-owned firms, and a sub-goal of a minimum of **0%** percent participation by firms classified as Asian American-owned firms. A bidder may count toward its MBE goals expenditures for materials and supplies obtained from MBE regular dealers and/or manufactures provided that the MBE assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). The bidder may count 60 percent of its expenditures to an MBE regular dealer, that is not a manufacturer, provided that the MBE supplier performs a commercially useful function in the supply process. The apparent low bidder shall submit to the Administration, within 10 business days after notification that it is the apparent low bidder, an acceptable Affirmative Action Plan for the utilization of Minority Business Enterprises in this Contract. The Contract will not be awarded without the bidder's Affirmative Action Plan being approved by the Administration.
4. The Affirmative Action Plan shall include, as a minimum:
 - a. The name of an employee designated as the bidder's Minority Business Liaison Officer.
 - b. A complete MBE Subcontractor Project Participation Affidavit of minority business enterprises, from among those whose names appear in the MDOT MBE Directory or who are otherwise certified by MDOT as being minority business enterprises. Except as permitted by law and approved by the Administration, the MBE Subcontractor Project Participation Affidavit submitted after the opening of bids or proposals shall include all MBE firms identified on the MBE participation schedule submitted with the bid or initial proposal with a percentage of participation that meets or exceeds the percentage of participation indicated in the bid or initial proposal. The MBE Subcontractor Project Participation Affidavit shall be completed and signed by the Bidder and MBE for each business listed in the MBE Participation Schedule.
 - c. A completed Outreach Efforts Compliance Statement.
5. When a bidder intends to attain the appropriate goal for minority business enterprise participation by use of a joint venture, the bidder shall submit a Joint Venture Disclosure Affidavit showing the extent of the MBE participation. If a bidder intends to use a joint venture as a subcontractor to meet its goal, the affidavit shall be submitted through the bidder by the proposed subcontractor and signed by all parties.
6. When the proposed MBE participation does not meet the MBE Contract goals, information sufficient to demonstrate that the bidder has made good faith efforts to meet these goals shall be required.

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
5 of 10

7. Request for Exception to the MBE Goal

If the bidder is unable to secure from MBEs by subcontracting and/or by procurement of materials and/or services, commitments which at least equal the appropriate percent of the value of the prime Contract at time of bid, the bidder shall request, in writing, waiver of the unmet portion of the goal. This request must be initiated by checking the appropriate box on the Certified MBE Utilization and Fair Solicitation Affidavit submitted with the bid or initial proposal.

The waiver may be granted by the Administrator. To obtain approval of a waiver, the bidder shall submit the following:

- a. A detailed statement of efforts made prior to bid to contact and negotiate with MBEs, including the dates, names, addresses, and telephone numbers of MBEs who were contacted; a description of the information provided to the MBEs regarding the work to be performed; anticipated schedule for portions of the work to be performed; and a detailed statement of the reasons why additional prospective agreements with MBEs were not reached;
- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goals;
- c. For each MBE that the Contractor considers not qualified, but from which a bid has been received, a detailed statement of the reasons for the bidder's conclusion; and
- d. For each MBE contacted but unavailable, a Minority Contractor Unavailability Certificate, signed by the minority business enterprise, or a statement from the bidder stating that the MBE refused to sign the Certificate.

8. Guidance concerning good faith efforts

The following is a list of the types of actions and factors that will be used to determine the bidder's or offeror's good faith efforts to obtain MBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of certified MBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the MBEs to respond to the solicitation. The bidder must determine with certainty if the MBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by MBEs in order to increase the likelihood that the MBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE participation, even when the bidder or offeror might otherwise prefer to perform these work items with its own forces.
- c. Providing interested MBEs with adequate information about the plans, specifications,

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
6 of 10

and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- d. (1)** Negotiating in good faith with interested MBEs. It is the bidder's or offeror's responsibility to make a portion of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs is not in itself sufficient reason for a bidder's failure to meet the contract MBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders and offerors are not, however, required to accept higher quotes from MBEs if the price difference is excessive or unreasonable.
- e.** Not rejecting MBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- f.** Making efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- g.** Making efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h.** Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MBEs.
- i.** In determining whether a bidder or offeror has made good faith efforts, the Administration may take into account the performance of other bidders or offerors in meeting the contract goal. For example, when the apparent successful bidder or offeror fails to meet the contract goal, but others meet it, the Administration may reasonably raise the question of whether, with additional reasonable efforts, the apparent

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
7 of 10

successful bidder or offeror could have met the goal. If the apparent successful bidder or offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders or offerors, the Administration may view this, in conjunction with other factors, as evidence of the apparent successful bidder or offeror having made good faith efforts.

9. Bidder Use of MBE Special Services

The bidder shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan fund accounts, time and demand deposit accounts, payroll services, and, if needed, organization investment counseling. It is the policy of MDOT to encourage its Contractors to utilize, on a continuing basis, MBE banks.

10. Bidder Records

The bidder shall maintain records showing actions which have been taken to comply with procedures set forth herein.

11. Bidders Cooperation

The bidder shall cooperate with the Administration representative in any review of the Contractor's procedures and practices, with respect to the MBEs, which the Administration's representative may, from time to time, conduct.

12. Bidder MBE Modifications

During the life of the Contract, all plans to modify the approved MBE participation program will require the approval of the Administrator or his authorized representative. This will include any changes to items of work to be sublet or materials and services to be obtained which differs from those in the original MBE participation program. All requests for revisions shall be directed to the appropriate District Engineer for disposition.

The low bidder's failure to participate in any of the above proceedings or failure to furnish information after written request may result in rejecting the bid and non-award of the Contract.

C. RECORDS AND REPORTS

1. The Contractor shall keep such records as are necessary to determine compliance with its Minority Business Enterprise utilization obligations. The records kept by the Contractor shall be designed to include:
 - a. The name of minority and non-minority subcontractors and suppliers, the type of work materials or services being performed on or incorporated in this project, the monetary value of such work materials or services, the terms of performance and/or delivery, copies of all cancelled checks paid to subcontractors and suppliers, and a record of all payments made to subcontractors and suppliers.
 - b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of minority business enterprises on this project.

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
8 of 10

- c. The progress and efforts made in seeking out minority contractor organizations and individual minority contractors for work on this project.
2. The Contractor shall submit reports, on a monthly basis, of those contracts and other business transactions executed with minority business enterprises, with respect to the records referred to in C(1) above, in such form, manner and content as prescribed by the Administration. The reports shall be due monthly on the 15th calendar day of each month. If the Contractor cannot submit their report on time, the Contractor shall notify the Administration's representative and request additional time to submit the report. Failure of the Contractor to report in a timely manner may result in a finding of noncompliance. Additional report may be required by the Administration upon request.
3. To ensure compliance with the certified MBE Contract participation goal, the Contractor shall:
 - a. Submit monthly reports listing all unpaid invoices over 30 days from certified MBE subcontractors and the reason payment has not been made.
 - b. Include in its agreement with certified MBE subcontractors a requirement that MBE subcontractors are to submit monthly to the Administration a report identifying the prime Contractor and listing the following:
 - (1) Payment received in the proceeding 30 days from the prime Contractor; and
 - (2) Invoices for which the subcontractor has not been paid.
4. All such records and reports shall be retained for a period of three years following acceptance of final payment and shall be available for inspection by MDOT.

D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

1. Whenever the Administration believes the prime Contractor or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration's representative will conduct an investigation. If the Administration representative finds the prime Contractor or any subcontractor is not in compliance with these provisions, the representative will make a report of noncompliance and notify such Contractor in writing of the steps that will, in the judgement of the Administration, bring the Contractor into compliance. If the Contractor fails or refuses to comply fully with such steps, the Administration's representative will make a final report of the noncompliance to the Administrator, who may direct the imposition of one or more of the sanctions listed below:
 - a. Suspension of work on the project, pending correction;
 - b. Withholding payment or a percentage thereof, pending correction;
 - c. Referral of MBEs to the MDOT Office of MBE for review for decertification, for review/referral to the Attorney General's Office for review/initiation of debarment, or for review for criminal prosecution through the MDOT Office of General Counsel;
 - d. Initiation of suspension in accordance with COMAR regulations;

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
9 of 10

- e. Referral to the Attorney General’s Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;
 - f. Any other action, as appropriate, within the discretion of the Administrator.
2. If the documents used to determine the status of a MBE contains false or misleading or misrepresenting information, the matter will be referred to the MDOT Office of the General Counsel for appropriate action. In addition, when directed by the Administrator, the Contractor shall terminate, without liability to the Administration, its contract with a firm, which, for any reason, is either no longer certified or no longer eligible to do business in the State. The Contractor shall promptly submit plans for maintaining the required MBE participation on the project or appropriate request for waiver of all or part of the Contract goal with appropriate documentation to support Good Faith Efforts (as established by COMAR including the MDOT MBE/MBE Program Manual). The program and all revisions require the Administrator’s approval.
3. **Liquidated Damages.** This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that, for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$23.00 per calendar day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$82.00 per week per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.

CONTRACT PROVISIONS
MBE FOR STRAIGHT STATE CONTRACTS

CONTRACT NO. AW7766514
10 of 10

- d. Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

E. SUBCONTRACTING

Subcontracting by the Prime Contractor. Form B Request for Approval of Subcontractor shall be used by the Prime Contractor to request approval of a Subcontractor and also to ensure that a formal Subcontract has been or will be written and kept on file by the Prime Contractor. Completion and submittal of the form by the Prime Contractor acknowledges that the Administration's Contracting Officer may require the submission of the written Subcontract for review by the Administration and/or FHWA.

Lower Tier Subcontracting by an Approved Subcontractor. Form B Subcontractor's Request for Approval of Lower Tier Subcontractor shall be used by an Approved Subcontractor to request approval of a Lower Tier Subcontractor and also to ensure that a formal Subcontract has been or will be written and kept on file by the Subcontractor. Completion and submittal of the form by the Subcontractor acknowledges that the Administration's Contracting Officer may require the submission of the written Subcontract for review by the Administration and/or FHWA.

Form Acquisitions. Maryland State Highway Administration Form B may be acquired through the Administration's Contract Award Division or District Office. All questions should be directed to the Office of Construction, Contract Award Division.

It is the Administration's intention to randomly select during each calendar quarter a representative sample of written Subcontracts for review. This review will be conducted by the Office of Construction's Contract Award Division.

Prime - Subcontractor MBE Commitment Agreement. Per COMAR 21.11.03.10 B(2), all apparent low bidders on contracts are required to submit a copy of their subcontractor agreements with every MBE subcontractor listed on their MDOT MBE Form B within 10 Business days of receiving the apparent low bid notification letter. Failure to submit the required MBE subcontractor agreements in the specified timeframe may result in the apparent low bidder being rejected as non-responsible.

These subcontractor agreements must include at a minimum all necessary terms, including pricing required for the MBE to perform its proposed work and for the apparent successful bidder to pay the MBE for its work during the contract term.

Please refer to COMAR 21.11.03.10 B(2), or contact SHA's Office of Construction - Contract Award Division (see details below) for more information.

Tel: (443) 572-5215

Email: SHAOCCContractawarddivision@mdot.maryland.gov

CONTRACT PROVISIONS
NOTICE TO CONTRACTORS MBE GOAL

CONTRACT NO. AW7766514
1 of 1

NOTICE TO CONTRACTORS

CONCERNING THE MBE GOAL ON THIS CONTRACT

The Maryland Department of Transportation is committed to providing the maximum amount of contracting opportunities to certified Minority Business Enterprises (MBEs). The previously established policy excluded consideration of the cost of supplying structural steel for MBE participation since there were no structural steel manufacturers certified by MDOT. This exemption is no longer applicable since MBE firms have been certified under this category.

The Administration reserves the right to verify the accuracy of the dollar value included on the Contractor's Affirmative Action Plan, including the value associated with the manufacture, supply, and installation of structural steel.

CONTRACT PROVISIONS
MBE DUAL CERTIFICATION

CONTRACT NO. AW7766514
1 of 1

CONTRACT PROVISIONS
MBE DUAL CERTIFICATION

Effective on October 1, 2009, Minority Business Enterprise (MBE) firms may elect to be dually certified as woman-owned businesses and as members of an ethnic or racial category. For purposes of achieving any gender or ethnic/racial MBE participation subgoals in a particular contract, an MBE firm that has dual certification may participate in the contract either as a woman-owned business or as a business owned by a member of a racial or ethnic minority group, **but not both**.

- (a) A firm must be listed in the MDOT MBE/DBE Directory with the gender category in order to be used to meet the gender subgoal.
- (b) A firm must be listed in the MDOT MBE/DBE Directory with an ethnic/racial category in order to be used to meet the ethnic/racial subgoal.
- (c) A firm must be listed in the MDOT MBE/DBE Directory with both the gender and ethnic/racial categories in order for a contractor to have the option of selecting which of those categories it will use for the firm on a State contract.
- (d) Contractors should designate whether the MBE firm will be used as a woman-owned business or as a business owned by a member of a racial/ethnic group before calculating the percentage of MBE participation goals and subgoals they intend to meet.

Maryland's MBE/DBE Directory will reflect the dual certification status beginning October 1, 2009. You can access the MBE/DBE Directory at <https://www.mdot.maryland.gov/tso/pages/index.aspx?pageid=91>

CONTRACT PROVISIONS
APPRENTICESHIP TRAINING FUND

CONTRACT NO. AW7766514
1 of 5

CONTRACT PROVISIONS

APPRENTICESHIP TRAINING FUND

Effective July 1, 2013 State Law requires all contractors and subcontractors working on State prevailing wage projects with prevailing wage determinations to register (Apprenticeship Training Fund Site) with the Division of Labor and Industry Prevailing Wage Unit prior to the commencement of work and to make certain contributions toward improving and expanding apprenticeship programs in the State. In addition, registered apprenticeship programs and organizations that have registered apprenticeship programs that have been selected by contractors and subcontractors for contributions also are required to register with the Division of Labor and Industry Prevailing Wage Unit.

The State Apprenticeship Training Fund requires contractors and some subcontractors on public work contracts to make contributions to: (1) a registered apprenticeship program, (2) an organization that operates registered programs, or (3) the State Apprenticeship Training Fund.

The following information concerning the requirements of the apprenticeship training fund program are being provided for informational purposes only. It is the contractor's responsibility to contact the Maryland Department of Labor, Licensing and Regulation (DLLR), prior to commencement of any work, to determine how these provisions are being implemented and enforced by DLLR.

Definitions. The following terms have the meanings indicated.

(a) Terms Defined.

- (1)** "Approved apprenticeship program" means an apprenticeship program or an organization with an apprenticeship program which has been registered with, and approved by, the Maryland Apprenticeship and Training Council or the United States Department of Labor.
- (2)** "Commissioner" means the Commissioner of Labor and Industry.
- (3)** "Covered craft" means a classification of workers listed in the prevailing wage determination applicable to a prevailing wage project.
- (4)** "Fund" means the State Apprenticeship Training Fund.

Hourly Contribution Rate.

- (a)** If a contractor participates in an apprenticeship training program for each covered craft, the contractor satisfies their obligation under State Finance and Procurement Article, §17-603(a)(1), Annotated Code of Maryland, by making contributions of at least 25 cents per person per hour.

CONTRACT PROVISIONS
APPRENTICESHIP TRAINING FUND

CONTRACT NO. AW7766514
2 of 5

- (b) If a subcontractor participates in an apprenticeship training program for each covered craft, the subcontractor satisfies their obligation under State Finance and Procurement Article, §17-604(a)(1), Annotated Code of Maryland, by making contributions of at least 25 cents per person per hour.
- (c) Contractors and subcontractors that do not participate in an apprenticeship training program shall pay at least 25 cents per person per hour for each employee in each covered craft on the prevailing wage project to a registered apprenticeship program, an organization that has a registered apprenticeship program, or the Fund.
- (d) Contractors and subcontractors who make contributions to the Fund shall do so on a monthly basis.
- (e) Contractors and subcontractors who make contributions to a registered apprenticeship program or an organization that has a registered apprenticeship program shall make contributions on a monthly basis or consistent with a collective bargaining agreement or other contractual arrangement.
- (f) If there is a prevailing wage determination that includes a fringe benefit contribution for apprenticeship that exceeds 25 cents per hour, a contractor or subcontractor that makes contributions to the Fund shall pay to the employee wages in the amount that the fringe benefit contribution for apprenticeship exceeds 25 cents per hour.

Contractor and Subcontractor Registration.

- (a) Contractors performing work on a prevailing wage project shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>.
- (b) Subcontractors who are performing work valued at \$100,000 or more on a prevailing wage project shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>.
- (c) Prior to the commencement of work, a registered contractor or registered subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and complete the required project log information including:
 - (1) The prevailing wage project number;
 - (2) Contract value;
 - (3) Identification of subcontractors to perform work on the project and subcontract value amount;

CONTRACT PROVISIONS
APPRENTICESHIP TRAINING FUND

CONTRACT NO. AW7766514
3 of 5

- (4) Designation of the program or Fund where the contractor or subcontractor will make contributions; and
- (5) Any other information that the Commissioner requires.

Contractor and Subcontractor Notification to Subcontractors.

- (a) Contractors and subcontractors who hire subcontractors performing work valued at \$100,000 or more on a public work contract subject to the Maryland Prevailing Wage Law shall provide the subcontractors with written notice of the following requirements:
 - (1) Subcontractors shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>;
 - (2) Prior to the commencement of work, a subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and complete the required project log information including:
 - (a) The prevailing wage project number;
 - (b) Contract value;
 - (c) Identification of all subcontractors to perform work on the project and subcontract value amount;
 - (d) Designation of the program or Fund where the subcontractor will make contributions; and
 - (e) Any other information that the Commissioner requires; and
 - (f) Subcontractors performing work on a prevailing wage project valued at \$100,000 or more are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.
- (b) Contractors and subcontractors shall retain a copy of the written notice required in §A of this regulation that was provided to covered subcontractors for inspection and review by the Commissioner for 3 years after the completion of their work on a public work project.

Contractor and Subcontractor Obligations Related to Contributions.

Contractors and subcontractors are required to:

- (a) Indicate on their prevailing wage payroll record their contributions under State Finance and Procurement Article, §17-603 or 17-604, Annotated Code of Maryland; and

CONTRACT PROVISIONS
APPRENTICESHIP TRAINING FUND

CONTRACT NO. AW7766514
4 of 5

- (b) Certify that the contributions were received by an approved apprenticeship program or the Fund.

Notification to Division of Labor and Industry of Changes to Designated Approved Apprenticeship Programs or Fund.

- (a) Contractors and subcontractors shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and indicate each approved apprenticeship program or the Fund to which it will make contributions.
- (b) If a contractor or subcontractor intends to change a designation, it shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> to indicate the change in designation 30 days prior to that change.

Approved Apprenticeship Program Obligations.

- (a) Upon notice from the Division of Labor and Industry that the approved apprenticeship program has been designated for contributions by a contractor or subcontractor, an approved apprenticeship program shall register on the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>.
- (b) An approved apprenticeship program shall complete the requested information on contributions received from contractors and subcontractors for each covered craft for each prevailing wage project at the Division of Labor and Industry's website at <http://www.dllr.state.md.us/prevwage> on or before the last day of the month immediately following each calendar quarter.
- (c) Certify that all funds received are used solely for the purpose of improving or expanding apprenticeship training in the State.

Audit of an Approved Apprenticeship Program. The Commissioner may require an independent audit by a certified public accountant of an approved apprenticeship program to verify that contributions received are used consistent with this subtitle.

Enforcement Procedures.

- (a) The Commissioner may investigate whether State Finance and Procurement Article, Title 17, Subtitle 6, Annotated Code of Maryland, has been violated:
 - (1) On the Commissioner's own initiative;
 - (2) On receipt of a written complaint; or
 - (3) On referral from another State agency.

CONTRACT PROVISIONS
APPRENTICESHIP TRAINING FUND

CONTRACT NO. AW7766514
5 of 5

- (b) The Commissioner may require a contractor, subcontractor, or an approved apprenticeship program to produce records as part of its investigation.
- (c) The Commissioner may enter a place of business to:
 - (1) Interview individuals; or
 - (2) Review and copy records.
- (d) If after an investigation, the Commissioner determines that there is a violation of State Finance and Procurement Article, Title 17, Subtitle 6, Annotated Code of Maryland, or a regulation adopted to carry out the title, the Commissioner shall issue an administrative charge that shall:
 - (1) Describe in detail the nature of the alleged violation;
 - (2) Cite the provision of law or regulation that is alleged to have been violated; and
 - (3) State the penalty, if any.
- (e) Within a reasonable amount of time after the issuance of the administrative charge, the Commissioner shall send a copy of the administrative charge to the alleged violator by certified mail with notice of the opportunity to request a hearing.
- (f) Within 15 days after the alleged violator receives the administrative charge, the employer may submit a written request for a hearing on the administrative charge and proposed penalty.
- (g) If a hearing is not requested within 15 days, the administrative charge, including any penalties, shall become a final order of the Commissioner.
- (h) If there is a request for a hearing, the Commissioner may delegate the hearing to the Office of Administrative Hearings in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.
- (i) A proposed decision of an administrative law judge shall become a final order of the Commissioner unless, within 15 days of the issuance of the proposed decision:
 - (1) The Commissioner orders review of the proposed decision; or
 - (2) The alleged violator submits to the Commissioner a written request for review of the proposed decision.
- (j) After review of the proposed decision under §I of this regulation, with or without a hearing on the record, the Commissioner shall issue an order that affirms, modifies, or vacates the proposed decision.

CONTRACT PROVISIONS
MBE COMPLIANCE FIELD MEETING

CONTRACT NO. AW7766514
1 of 1

MBE COMPLIANCE FIELD MEETING

An MBE compliance Field Meeting will be conducted to review the responsibilities of the Administration and the Contractor's personnel relative to MBE Compliance and documentation. The meeting will be held within two weeks after starting work on the project.

The Construction Project Engineer, who will notify the following of the date, time and location, will arrange the meeting. At least one week advanced notice will be required.

(a) Administrative Representatives.

- (1) Director, Office of Equal Opportunity or Designee
- (2) District Equal Opportunity Officer
- (3) Regional Constructional Engineer
- (4) Construction Project Engineer
- (5) Construction Inspection Division Inspector

(b) Contract Representatives.

- (1) Superintendent - Prime Contractor
- (2) Equal Opportunity Officer - Prime Contractor
- (3) Owner/Superintendent/Foreman MBE - Subcontractor

The Construction Project Engineer and Equal Opportunity Representative will jointly conduct the meeting. The Contractor shall notify the appropriate subcontractors and ensure their attendance.

CONTRACT PROVISIONS
TRAFFIC CONTROL PLAN CERTIFICATION

CONTRACT NO. AW7766514

1 of 1

TRAFFIC CONTROL PLAN CERTIFICATION

PRIOR TO THE COMMENCEMENT OF WORK ON THIS PROJECT, THE SUCCESSFUL BIDDER WILL BE REQUIRED TO COMPLETE A TRAFFIC CONTROL PLAN CERTIFICATION CONTAINING THE INFORMATION SHOWN BELOW. THE CERTIFICATION FORM WILL BE PROVIDED TO THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT.

The Administration's Traffic Control Plan (TCP) has been reviewed and the following course of action shall be followed:

Option 1 _____

The TCP is accepted and shall be used on this project.

Option 2 _____

The TCP is accepted; however, revisions and/or additions shall be submitted for approval in conformance with the Administration's Specifications 104.01 and TC-2.10. It is understood that no additional sum of money is payable to the Contractor if the Administration accepts Option 2.

Option 3 _____

The TCP is not accepted and revision shall be submitted for approval in accordance with the Administration's Specifications 104.01 and TC-2.10. It is understood that no additional sum of money is payable to the Contractor if the Administration accepts Option 3.

It is understood that the effective implementation of the approved TCP is the responsibility of the Contractor. Minor modifications may be made by the Traffic Manager if field conditions warrant and prior concurrence is obtained from the Engineer. Significant changes to the TCP shall be submitted to the Engineer in writing, for approval, in conformance with the Administration's Specifications 104.01.

(DATE)

(SIGNATURE)

(PRINT SIGNATURE)

(TITLE)



Indiana Department of Transportation Proposal

Date of Letting: February 11, 2026
Time of Letting: 10:00 AM

Location of Letting: INDIANA GOVERNMENT CENTER NORTH
100 N. SENATE AVENUE, N758-CONTRACTS
INDIANAPOLIS, IN 46204

Contract Number: R -45581-A **Districts:** Fort Wayne

Counties: ALLEN, HUNTINGTON, WELLS

Description: PAVEMENT PATCHING

Location: ON I-69 FROM 0.77 MILE SOUTH OF US 224 TO 0.64 MILE SOUTH OF I-469S

Project Control No.	Federal/State No.	Location
2400567	2400567	PAVEMENT PATCHING HUNTINGTON COUNTY - ON I-69 FROM 0.77 MILE S OF US 224 TO 0.64 MILE S OF I-469S

Time ID	Description	Completion Date or Number of Units	Time Type	Liquidated Damages	Rate
00	COMPLETION DATE	11/13/2026	DT	\$3,000.00	per Day
01	EARLIEST DATE TO BEGIN WORK	7/1/2026	DT		

(*) - Indicates Cost Plus Time Site. See Schedule of Items for Cost Per Unit

MBE, WBE AND IVOSB GOALS: Contract provisions goals of 7.00 percent of the contract bid price for the MBE goal, 5.00 percent of the contract bid price for the WBE goal and 3.00 percent of the contract bid price for the IVOSB goal have been established as the minimum amount for contracting to minority, women and Indiana veteran business enterprises.

Pre-Bid Meeting Date: Not Applicable

The following documents are included in the Contract:
2026 INDOT Standard Specifications effective 9-1-2025
INDOT Standard Drawings listed on Standard Drawings Index effective 9-1-2025
INDOT Qualified Materials Lists and Certified Sources Lists
Pre-bid Questions and Answers published on the INDOT website

Additional reference material may be available on the INDOT website, which may include, but is not limited to permits, asbestos reports, geotechnical reports and utilities information. The contractor shall consider the available additional reference material when preparing their proposal bid.



INDIANA DEPARTMENT OF TRANSPORTATION

OFFICIAL TABULATION OF BIDS

January 14, 2026 Letting

APPROVED:  _____ (for)

Lyndsay Quist, Commissioner
Indiana Department Of Transportation

Date: 02/02/2026





INDIANA DEPARTMENT OF TRANSPORTATION
OFFICIAL BID TABULATIONS
 FOR THE LETTING OF January 14, 2026

Call: 115

Fed/State Project No 1601017

MBE Goal: 7.00

WBE Goal: 5.00 IVOSB Goal: 3.00

Description: PAVEMENT REPLACEMENT

Engineer's Estimate: \$7,451,528.48

Contract R -39911-B

Route: SR 31

Seymour District

Location: ON US 31 FROM SR 256 TO 0.70 MILE NORTH OF SR 256

County: SCOTT

Code	Bidder	Address	Phone	Amount of Bid	Type	Low	Remarks
35-1139301	E & B PAVING LLC quotes@ebpaving.com	Fishers IN	(765)643-5358	\$8,465,500.00	R		
35-1357381	DAVE OMARA CONTRACTOR INC terid@daveomara.com	NORTH VERNON IN	(812)346-4135	\$5,784,721.00	R	X	Awarded DBE 0.00%
35-1487672	MAC CONSTRUCTION & EXCAVATING INC estimator@macconstruction.com	NEW ALBANY IN	(812)941-7895	\$7,235,000.00	R		
35-1785217	LIBS PAVING COMPANY INC lhildenbrand@libspaving.com	FLOYDS KNOBS IN	(812)944-8942	\$6,478,452.42	R		



**INDIANA DEPARTMENT OF TRANSPORTATION
OFFICIAL BID TABULATIONS**
FOR THE LETTING OF January 14, 2026

Call: 301

Fed/State Project No 2400074

MBE Goal: 7.00

WBE Goal: 5.00 IVOSB Goal: 3.00

Description: INSTITUTION AND PARK ROAD MAINTENANCE

Engineer's Estimate: \$609,216.00

Contract R -45468-A

Route:

Greenfield District

Location: ON VARIOUS ROADS AT THE STATE POLICE POST, OFF E 21ST STREET

County: MARION

Code	Bidder	Address	Phone	Amount of Bid	Type	Low	Remarks
35-0918397	RIETH-RILEY CONSTRUCTION CO., INC. nwhitcomb@rieth-riley.com	INDIANAPOLIS IN	(317)634-5561	\$578,269.22	R		
35-1139301	E & B PAVING LLC quotes@ebpaving.com	Fishers IN	(765)643-5358	\$554,968.47	R	X	Pending*
35-1151771	CALUMET CIVIL CONTRACTORS INC quotes@calumetcivil.com	WHITESTOWN IN	(317)727-3284	\$773,000.00	R		
35-1561537	GLOBE ASPHALT PAVING CO INC jshumaker@globeasphalt.com	INDIANAPOLIS IN	(317)568-4344	\$642,477.50	R		

* ADDITIONAL TIME IS REQUIRED FOR INDIANA DEPARTMENT OF ADMINISTRATION, DIVISION OF SUPPLIER DIVERSITY, GOOD FAITH EFFORTS REVIEW.



INDIANA DEPARTMENT OF TRANSPORTATION
OFFICIAL BID TABULATIONS
 FOR THE LETTING OF January 14, 2026

Call: 341 Fed/State Project No 2401499 MBE Goal: 7.00 WBE Goal: 5.00 IVOSB Goal: 3.00
 Description: PAVEMENT PATCHING Engineer's Estimate: \$5,001,837.05
 Contract R -45966-A Route: I-74 Crawfordsville District
 Location: ON I-74 FROM 0.23 MILE E OF SR 39 TO 4.05 MILES E OF SR 267
 County: HENDRICKS

Code	Bidder	Address	Phone	Amount of Bid	Type	Low	Remarks
35-0918397	RIETH-RILEY CONSTRUCTION CO., INC. kcooper@rieth-riley.com	INDIANAPOLIS IN	(317)634-5561	\$2,338,294.49	R		
35-1139301	E & B PAVING LLC quotes@ebpaving.com	Fishers IN	(765)643-5358	\$2,248,452.26	R	X	Pending*
35-1917625	MILESTONE CONTRACTORS LP Indyquotes@milestonelp.com	INDIANAPOLIS IN	(317)788-6885	\$3,396,591.00	R		

* ADDITIONAL TIME IS REQUIRED FOR INDIANA DEPARTMENT OF ADMINISTRATION, DIVISION OF SUPPLIER DIVERSITY, GOOD FAITH EFFORTS REVIEW.

