

**FREDERICK COMMUNITY COLLEGE
TERMS AND CONDITIONS**

1. **CONTRACT TERMS:** The performance of this contract shall be governed solely by the terms and conditions as set forth in this document, notwithstanding any language contained on any invoice, shipping order, bill of lading or other document furnished by the party submitting the bid or proposal (hereinafter referred to as the “Offeror”) at any time. The acceptance by Frederick Community College (the “College”) of any goods or services shall not be construed as acceptance by the College of any terms or conditions which are inconsistent with the terms and conditions stated here. All terms and conditions in any College solicitation are made part of this contract, as applicable. Any different or additional terms other than those specified in this document that are contained in the acceptance by the Offeror are hereby objected to.
2. **CONTRACT/COMPLETE AGREEMENT:** The contract shall be in the form of an AIA Standard Form of Agreement (if applicable), a purchase order(s), and any and all related contract documents, to include, but not limited to, the College solicitation, any and all Addendum, the offeror’s solicitation response, any and all subsequent correspondence; all required submittals, i.e., certificate of insurance, bonds, etc. as well as any other documents which may be required and mutually agreed upon and negotiated by the College and the Offeror. These documents constitute the sole and entire agreement between the College and Offeror with respect to the subject matter, superseding completely any oral or written communications unless the terms are expressly incorporated into additional written documentation. Where Offeror’s quotation is referred to in a purchase order, such quotation is incorporated in the purchase order only to the extent of specifying the nature or description of the goods ordered and only to the extent such items are consistent with the other terms stated in this document.
3. **ACCEPTANCE PERIOD:** Any proposal in response to a College solicitation shall be valid for one hundred twenty (120) days or as otherwise specified in the solicitation document. At the end of the one hundred twenty (120) days, unless otherwise specified, the proposal will expire.
4. **ADDENDA:** The College reserves the right to amend or add to its solicitation documents at any time prior to the due date. If it becomes necessary to change or add to any part of a solicitation document, an addenda will be posted on the purchasing website at www.frederick.edu/bidboard. It is the sole responsibility of the Offeror to ensure continued monitoring of the College Purchasing Website for any posted amendments, addenda or clarifications prior to submitting their solicitation response and duly acknowledge receipt of said amendments or addenda on the proper bid form. Failure to do so may cause rejection of a bid or proposal.
5. **ADDITIONAL ORDERS:** Unless it is specifically stated to the contrary in the solicitation response, the College reserves the option to place additional orders against a contract awarded as a result of a solicitation at the same terms and conditions, if it is mutually agreeable.
6. **DELIVERY AND PACKING:** Prices shall be FOB Destination freight prepaid to the delivery point designated. Offeror shall retain title and control of all goods until they are delivered, and the contract of coverage has been completed. All risks of transportation and all related charges shall be the responsibility of the Offeror. All claims for visible and concealed damage shall be filed by the Offeror. Unauthorized shipments are subject to rejection and return at Offeror’s expense. All prices quoted must include delivery. All goods delivered under a solicitation shall be packed in accordance with accepted trade practices. No charges may be made over and above the quoted/bid price for packaging, or for deposits or containers unless specified in the College solicitation. No charge will be allowed

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for cartage unless by prior written agreement. Complete deliveries must be made by the successfully awarded Offeror to the designated location as indicated on the College purchase order. A packing slip shall be included in each shipment. All deliveries must be prepaid and must be delivered to each location designated on the purchase order at no additional cost. DELIVERIES MUST BE MADE TO

THE SPECIFIED LOCATION. NO COLLECT SHIPMENTS OR SIDEWALK DELIVERIES WILL BE ACCEPTED.

7. **INSPECTION AND ACCEPTANCE:** No goods received by the College pursuant to a purchase order shall be deemed accepted until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at expense of the Offeror for full credit or replacement, at the sole option of the College. The College reserves the right to test any goods or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without College authorization. If Offeror fails to cure defect within ten (10) calendar days, the College reserves the right to purchase on the open market and Offeror shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.
8. **WARRANTY:** The Offeror expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by the College and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Said Offeror agrees to any repairs, labor, replacements, or necessary adjustments because of such defects to be made promptly by him/her and without cost to and the satisfaction of the College. Such warranty shall survive the contract and shall not be deemed waived either by the acceptance by the College of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Offeror further warrants all articles, material and work performed for a period of one (1) year, unless otherwise stated, from the date of acceptance of the items delivered and installed, or work completed. All repairs, replacements or adjustments during the warranty period shall be at the Offeror's sole expense. Also, said Offeror shall be responsible for handling all warranty issues directly with the manufacturer and not delegating to College staff. Failure to do so may result in rejection or cancellation of the order. Additional warranty requirements may be set forth in College bid documents.
9. **PATENTS/COPYRIGHTS:** Offeror represents and warrants that the sale and/or use of the goods offered will not infringe upon any U.S. or foreign patent, copyrights or other intellectual property rights. Offeror will at his/her/its own expense, indemnify, protect and save harmless the College, its trustees, agents, employees and students from any claim, action, cost of judgment or liability of any nature or kind for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented, invention, article or appliance furnished or used in the performance of the contract or arising out of the purchase or use of goods for which the Offeror is not the patentee, assignee, licensee or College.
10. **BILLING AND PAYMENT:** Each invoice shall reference the College purchase order number. All invoices will be paid within (30) days unless otherwise specified in a College solicitation document

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or unless any item thereon is questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. Charges or late payments of invoices prior to forty-five (45) days after receipt of invoice is expressly prohibited. The College shall have no liability for invoices not prepared in accordance with this Section 10.

- 11. CARE OF PREMISES:** Precautions taken for safety and protection shall be in accordance with the mandatory requirements of the safety codes prevailing within the jurisdiction in which the work is to be performed. During the performance of the contract, the Offeror shall take the necessary precautions to protect all areas upon which, or adjacent to, work is performed as a part of this contract. Any damage caused because of neglect by the Offeror, directly or indirectly, shall be repaired to the satisfaction of the College at the expense of the Offeror. If the Offeror fails or refuses to make such repair or replacement, the College will determine a cost and the Offeror shall be liable for the cost thereof, which may be charged or deducted from the Offeror price.
- 12. BID AND PERFORMANCE SECURITY:** If bid security is required, a bid bond or cashier's check in the amount indicated in the solicitation documents must accompany each bid and be made payable to Frederick Community College. Corporate or certified checks are not acceptable. Bonds must be in a form satisfactory to the College and underwritten and signed by a surety company licensed to issue bonds in the State of Maryland. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Vice President of Finance deems the failure to be non-substantial. Upon request, bid bonds or checks will be returned to all except the three (3) lowest bidders after the opening of bids, and the remaining checks or bid bonds will be returned upon request to all but successful bidder(s) after award of contract. If a performance bond is required, the successful bidder must submit an acceptable performance bond in the designated amount of the bid award, prior to award of contract.
- 13. CANCELLATION OF BID/PROPOSAL:** The College reserves the right to cancel any solicitation or to reject all solicitation responses received, if the College Vice President of Finance, in accordance with procedures approved by the College President, determines that it is fiscally advantageous or in the best interest of the College to cancel the solicitation.
- 14. PREPARATION OF BID/PROPOSAL:** Submissions in response to formal College solicitations must be hand signed by an authorized agent of the company submitting the bid. Notification of award will be made by "Notice of Intent to Award" and/or purchase order. An Offeror may attach a letter of explanation to the solicitation response for clarification. Offerors will be required, if requested by the College, to furnish satisfactory evidence that they are, in fact, bona fide manufacturers of or dealers in the items listed, and have a regularly established place of business. The College reserves the right to inspect any Offeror's place of business prior to award of contract to determine Offeror responsibility. All proposals shall provide a straightforward, concise delineation of capabilities to satisfy the requirements of the request. Emphasis should be on completeness and clarity of content. The College will not be responsible for any expense incurred by the Offeror in preparing and submitting a proposal.
- 15. QUALIFICATIONS:** The College may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the College all such information and data for this purpose as may be requested. The College reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The College further reserves the right to reject any proposal if the

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evidence submitted by, or investigations of, such Offeror fails to satisfy the College that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.

- 16. REFERENCES:** If references are required then the Offeror must provide at least three (3) references (or as indicated in the document requirements) from former and current clients who can confirm the Offeror's experience with the product or services that are similar in size or scope. All reference information must include the company's name and address and the contact's name and telephone number. The references provided must be able to confirm, without reservation, the Offeror's ability to provide the level of product or services requested. References from other higher education institutions or government agencies are preferred.
- 17. SIGNATURE:** The original copy of the solicitation must be signed in ink by the Offeror's authorized representative, with the signature in full. When a corporation is submitting a solicitation, the person signing shall state under the laws of which state the Corporation was chartered and the names and titles of the officers having the authority under the by-laws to sign contracts. Full business address, county, and State must be given after the signature. All correspondence concerning the offer and contract, including the offer summary, copy of contract, and purchase order, will be mailed or delivered to the address shown on the solicitation response. Failure to sign the Bid / Proposal Form may render the Bid / Proposal to be non-responsive. **NO OFFER WILL BE ACCEPTED WITHOUT ORIGINAL SIGNATURE.**
- 18. SPECIFICATIONS AND SCOPE OF WORK:** The specifications listed in the College solicitation may or may not specify all technical requirements which are needed to achieve the end result. When accepting the award, the Offeror assumes the responsibility of accomplishing the task requested in this document. Any omission of parts, products, processes, etc., in the specifications are the responsibility of the Offeror and the College will not bear the responsibility of their omission. If omissions in the specifications are discovered and these omissions will impact the contract price then it is the responsibility of the Offeror to note these omissions, in writing, prior to accepting the award. If these omissions are not noted prior to award, then the Offeror's silence is deemed as full and complete acceptance, and any additional costs will be borne by the Offeror.
- 19. RECEIPT OF BID/PROPOSAL:** It is the responsibility of the Offeror to assure that his/her/its bid or proposal is delivered to the place designated for receipt of the bids or proposals and prior to the time set for receipt of bids or proposals. Bids or proposals received after the time designated for receipt of bids/proposals will not be considered.
- 20. OUTSTANDING OBLIGATIONS:** By submitting a response to this solicitation, the Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits and that it shall not become so in arrears during the term of the contract, if selected for contract award.
- 21. COLLEGE BID/PROPOSAL PROTEST PROCEDURE:** All disputes concerning a College solicitation and/or submission in response to a College solicitation shall be resolved pursuant to the Bid/Proposal Protest Procedure available here [https://www.frederick.edu/getmedia/ c70dfec3-32ba-44dc-a5ce-0b15ce0b0849/Bid-Proposal-Protests.aspx22](https://www.frederick.edu/getmedia/c70dfec3-32ba-44dc-a5ce-0b15ce0b0849/Bid-Proposal-Protests.aspx22)
- 22. ACCURACY OF INFORMATION IN RESPONSE:** The Offeror awarded the contract shall be responsible for the accuracy or validity of information provided to the College in the solicitation

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response, either directly from the Offeror, or as obtained from others and utilized in the performance of the work.

23. **NOTICE TO PROCEED:** After the contract has been executed and all required documents received, the College will issue to the Offeror a "Notice to Proceed". The specified contract time shall begin on the date identified in the "Notice to Proceed".
24. **FAILURE TO EXECUTE CONTRACT:** If the Offeror, to whom the award is made, shall fail to execute the contract and required additional submissions, if any, within seven (7) days from the date these documents are requested by the College, the award may be annulled and the contract awarded to the second most responsive and responsible firm. Such firm shall fulfill every stipulation listed herein as if the firm were the original party to whom the award was made, or the College may reject all Bids / Proposals, as it deems appropriate and its best interest.
25. **CONTRACT AMENDMENTS:** The College, without invalidating the contract documents, may submit a written request to order extra work or to make changes to the contract by altering, adding to, or deducting from the work, and the contract sum shall reflect such changes. Price adjustments must be accepted, in writing, by the College before the supplier performs additional work on the project. The Offeror cannot accept purchase requests
26. for products or services that are not covered in this contract or make changes to the scope of work unless a price for those products or services has been negotiated with the College, and the Offeror has received a signed Amendment and/or revised purchase order from the College.
27. **FINANCIAL DISCLOSURE:** Offeror shall comply with Md. Code Ann., State Finance and Procurement Article, §13-221(c) if applicable, which requires that every business that enters into contracts, leases or other agreements with the State or a state unit and receives in the aggregate two hundred thousand dollars (\$200,000.00) or more during a calendar year shall, within thirty (30) days of the time when the two hundred thousand dollars (\$200,000.00) is reached, file with the Secretary of State certain specified information as required by the statute.
28. **POLITICAL CONTRIBUTION DISCLOSURE:** Offeror shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, shall file with the State Administration Board of Election Laws a statement as required by Md. Code Ann., Election Law § 14-104.
29. **REGISTRATION:** Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the Maryland State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the State Department of Assessments and Taxation.
30. **CONTINGENT FEES:** Offeror hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Offeror, to solicit or secure a contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this contract.

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- 31. MARYLAND PUBLIC INFORMATION ACT:** Offeror recognizes that the College is subject to the Maryland Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. Offeror agrees that it will provide any justification as to why any material, in whole or in part, is deemed to be confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed pursuant to the Maryland Public Information Act.
- 32. COMPLIANCE WITH LAWS:** Offeror agrees to pay for all permits, licenses and fees and comply, at no additional cost to the College, with all applicable Executive Orders, Federal, State, County, bi-county, regional and local laws, ordinances, rules and regulations in effect as of the date of this contract and as they may be amended from time to time. Offeror accepts sole liability and responsibility for compliance with all governmental regulations related to Offeror's employees and their employment, including without limitation such items as worker's compensation insurance coverage, unemployment insurance, social security withholdings (FICA), withholding for any and all governmental taxes, OSHA requirements, ERISA requirements, Fair Labor Standards Act (FLSA) requirements, the Immigration and Control Act of 1986 (IRCA), work safety rules, and such Federal State, and local laws and regulations that may apply to the Offeror's employees in relation to the services Offeror performs for the College, including but not limited to the equal employment opportunity clause set forth in 41 CFR 60-1.4(a), and the OSHA reporting requirements under 29 CFR § 1904.31(b)(3) for any agents of the Offeror on the premises of the College.
- 33. DRUG FREE WORKPLACE:** The College is committed to a workplace and campus environment free of substance abuse and is committed to full compliance with the Drug-Free Workplace Act of 1988, the Drug-Free Schools and Communities Act of 1986, as amended in 1989, the Maryland Drug and Alcohol Abuse plan. The Offeror shall agree to comply with these acts and all other applicable local, state and federal laws.
- 34. MINORITY PARTICIPATION:** It is the policy of the College to encourage minority businesses to provide goods and services for the performance of College operating needs. Minority businesses are defined as firms that are fifty-one percent (51%) owned and controlled by a member of a socially or economically disadvantaged minority group, which includes African Americans, Hispanics, Native Americans, Alaskan Natives, Asians, Pacific Islanders, women, and the mentally or physically disabled.
- 35. DEBARMENT STATUS:** By submitting their proposal and accepting this contract, Offeror certifies that it is not currently debarred by the State of Maryland or another governmental entity from submitting bids or proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred. Debarment status can be verified at the Maryland Government Debarred list at <https://www.bpw.state.md.us/Pages/Debarments> as well as checking System for Award Management, SAM.gov.
- 36. RECORD RETENTION:** Offeror shall maintain books and records relating to the subject matter of this contract, including but not limited to all charges to the College, for a period of three (3) years from the date of final payment under this contract.
- 37. AUDIT:** Offeror shall permit audit, fiscal and programmatic monitoring of the work performed under any contract issued. The College shall have access to and the right to examine and audit any records, books, documents and papers of Offeror and any subcontractor involving transactions related to this

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contract during the term of this contract and for a period of three (3) years after final payment under this contract.

- 38. HAZARDOUS AND TOXIC SUBSTANCES:** Offeror must comply with all applicable Federal, State, and County laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Offeror shall provide the College with a "Safety Data Sheet" including reference to the purchase order number, or in the case of a controlled hazardous waste substance, a hazardous waste manifest for all hazardous chemicals listed or subsequently added to the "Chemical Information List" in compliance with applicable laws, ordinances and regulations.
- 39. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION LAW:** When applicable, Offeror shall coordinate and pay for all work required to comply with this law. Additionally, Offeror shall be responsible for all locations of private utilities as required by the College.
- 40. NON-ASSIGNMENT AND SUBCONTRACTING:** Offeror shall not assign any contract or any rights or obligations hereunder without obtaining prior written consent of the College. No contract shall be made by Offeror with any other party for furnishing the services to be performed under this contract without the written approval of the College. These provisions will not be taken as requiring the approval of the contract of employment between Offeror and its personnel.
- 41. INDEMNIFICATION:** The Offeror shall be responsible for any loss, personal injury, expense, death and/or any other damages which may occur by reason of Offeror's acts, negligence, willfulness or failure to perform any of its obligations under this agreement. Any acts, negligence, willfulness or failure to perform any of the Offeror's obligations under this agreement, on the part of any agent, director, partner, servant or employee of Offeror are deemed to be the Offeror's acts. Offeror agrees to indemnify and hold harmless the College and its Board of Trustees, employees, agents and students from any claim, damage, liability, expense, and/or loss, including defense costs and attorneys' fees, arising directly or indirectly out of Offeror's performance under this contract. The indemnification obligation of Offeror shall include but shall not be limited to injuries to individuals and property of individuals who are not parties to the contract. Furthermore, the indemnification obligation of Offeror shall survive termination of the contract for any reason. Additionally, the College shall notify Offeror promptly in writing of any claim or action brought against the College in connection with this agreement. Upon such notification, Offeror shall promptly take over and defend any such claim or action. The College shall have the right and option to be represented in any such claim or action at its own expense. This indemnification provision shall survive the termination and/or completion of this agreement.
- 42. INSURANCE:** The Offeror shall purchase and maintain insurance as outlined in Attachment A and comply with the insurance requirements set forth below:
- 42.1.** Insurance policies shall include **Frederick Community College, and its elected and appointed Board members, officials, officers, consultants, agents and employees shall be named** as additional insureds under Commercial General Liability, Auto Liability, and, if applicable, Umbrella Liability for loss, injury and damage arising out of or associated with the Work under this agreement. Coverage afforded to the Additional Insured shall be primary and

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non-contributory to any other insurance available to the Additional Insured. This coverage shall apply to liability arising out of the operations performed by or on behalf of the insured in connection with the contract or agreement, including ongoing and completed operations. Include **copies of additional insured endorsements.**

- 42.2. The insurer(s) waive all rights of subrogation against Frederick Community College, including its trustees, officers, employees, agents, and volunteers, for losses arising out of or relating to the work performed under this agreement, regardless of whether such losses are caused in whole or in part by the negligence of Frederick Community College. This waiver applies to all applicable policies, including but not limited to Commercial General Liability, Workers' Compensation, Auto Liability and if applicable, Umbrella Liability.
- 42.3. Frederick Community College, including its trustees, officers, employees, agents, and volunteers, shall be named as Additional Insureds under the Commercial General Liability, Auto Liability, and, if applicable, Umbrella Liability policies.
- 42.4. All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.
- 42.5. The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.
- 42.6. All Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.
- 42.7. General Liability and Umbrella Insurance policies are to be in "Occurrence Form." If any liability insurance purchased by the Offeror has been issued on a "claims made" basis, the Offeror must comply with the following additional conditions: The Offeror shall agree to provide certificates of insurance evidencing the above coverages for a period of three (3) years after final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Contract; or The Offeror shall purchase an extended (minimum three years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this Contract.

- 42.8. The Offeror shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless the Owner grants specific approval for an exception.
- 42.9. Any deductibles or retentions in excess of \$10,000 shall be disclosed by the Offeror and are subject to Owner's written approval. Any deductible or retention amounts elected by the Offeror or imposed by the Offeror's insurer(s) shall be the sole responsibility of the Offeror. Any and all return premiums and/or dividends for insurance or coverage directly charged to the Owner by the Offeror in connection with this Contract shall belong to and be payable to

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the Owner. If the Owner is damaged by the failure or neglect of the Offeror to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Offeror shall bear all reasonable costs properly attributable thereto.

42.10. The Offeror shall require its own subcontractors as well as all trade Contractors to maintain insurance to the same extent required of the Offeror by the terms of the Contract unless any such requirement is expressly waived or amended by the Owner in writing. The Offeror shall furnish all subcontractors' and trade contractors' certificates of insurance to the Owner immediately upon request. The Offeror shall be fully responsible to the Owner for the acts and omissions of persons directly employed by the Offeror and also for the acts and omissions of persons employed by subcontractors.

42.11. The Owner shall provide and maintain Builder's Risk Protection throughout the project on a replacement cost basis with a limit at least equal to the initial contract sum. Unless otherwise provided in the Contract Documents, this Builders risk insurance shall cover materials to be incorporated into the Project which are off the site, and also such materials in transit as long as such materials have been paid for by Owner. The Offeror pay the cost of any deductible(s) required by the Builders Risk Protection as provided by the Owner. This provision shall not release the Offeror of the obligation to complete the work according to plans and specifications required by the contract and shall be obligated to full performance of the contract's undertaking. For projects where Builders Risk coverage is not applicable, the Offeror will insure all tools, equipment, and property to be installed.

43. TAXES: Sales Tax Exemption does not pass on to the contractor. Sales to the College are exempt from Federal, State or Municipal sales and excise tax. Frederick Community College is a Government Entity (30) and as such our sales tax exemption does not pass on to contractors. The College taxpayer identification number is 52-0743590.

44. USE OF THE CONTRACT BY OTHER AGENCIES AND EDUCATIONAL INSTITUTIONS: While these formal bids are prepared on behalf of the College, it is intended to apply to other Maryland educational institutions, public and non-profit agencies in both Frederick County, Maryland and the State of Maryland as listed below:

44.1. Frederick County Public Schools

44.2. Frederick County Government

44.3. Municipalities of Frederick County

44.4. Maryland State Colleges and Universities

Unless the Offeror takes an exception, the resulting award items will be available to all agencies listed. Should a price adjustment be necessary to include any other public agency, the Offeror must so note on their solicitation submission. Each of these agencies may purchase from the successful Offeror under the same terms and conditions of the contract with the College, in accordance with each agencies laws and regulations, or an agency may choose not to procure from the successful Offeror at the agency's sole discretion. If another entity or one of the above named agencies elects to purchase under the contract, the purchase requests and funding from other agencies will be the responsibility of those agencies. Contracts between the Offeror and other agencies shall not be binding or enforceable against the College. The College cannot be held liable for the transactions of another entity or agency.

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- 45. USE AND OWNERSHIP:** All documents, materials, or data developed as a result of this contract are the College's property. The College has the right to use and reproduce any documents, materials, and data, including confidential information, used in or developed as a result of this contract, unless otherwise noted and specifically approved by the College. The College may use this information for its own purposes or use it for reporting to Federal agencies. The Offeror warrants that it has title to or right of use of all documents, materials, or data used or developed in connection with this contract. The Offeror must keep confidential all documents, materials, and data prepared or developed by the Offeror or supplied by the College.
- 46. DISPUTES:** Any disputes between parties to the Contract which do not reach amicable settlement shall be subject to the exclusive jurisdiction of the Circuit Court of Frederick County, Maryland. The parties waive any right to trial by jury in any civil case. The Contractor shall carry on the work and maintain the Progress Schedule, during any disputes, unless otherwise directed by the College.
- 47. DELAYS AND EXTENSIONS OF TIME**
- 47.1.** No Damage for Delay: A time extension shall be the sole remedy for delays or suspensions caused by or attributable to the College, even if the delays or suspensions were: (1) of a kind not contemplated by the parties, (2) amounted to an abandonment of the Contract, or (3) were caused by active interference. The College shall have the right, at any time and for any reason, to delay or suspend the whole or any part of the Work herein without incurring liability, therefore. There shall be no damages for delay.
- 47.2.** The College shall be entitled to schedule the Work in the manner which, in its sole exercise of discretion, is in its best interest. There shall be no claims for inefficiencies, stacking of trades, lost productivity, or the like, which result from either the College's schedule or the manner in which the Work is performed.
- 47.3.** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the College or the Architect, or by any employee of either, or by any separate contractor employed by the College, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the College pending litigation or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. In the event that there is no Architect, then the College shall determine what amount, if any, the Contract Time shall be extended.
- 47.4.** Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise, it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.
- 47.5.** If necessary to reach a proper stopping place in any portion of the work or to complete work within Contract limit time, Contractor shall work overtime both his forces (including any of his subcontractors) and forces of the trade contractors without addition to the Contract Sum. Contractor shall be responsible for all incidental costs in connection with such overtime work.
- 47.6.** If work falls behind schedule, as determined by the Architect, the Contractor shall provide at his own expense, additional labor and/or equipment, overtime pay, etc., as required to overcome delays.

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- 47.7. The Contractor shall substantially complete the project no later than 270 days from the date of the Notice to Proceed. From payments due the Contractor, the College will deduct, as liquidated damages, a sum of Three Hundred dollars (\$300.00) for each calendar day of delay beyond the above stated Completion Date unless the Contract Time has been extended by Change Order.
- 47.8. The Contractor shall complete the Punch List of the Work within thirty (30) consecutive calendar days from the date of issue of the Punch List at Substantial Completion. Should the work not be completed within such time, it is understood and agreed that the College will deduct from payments due the Contractor, as liquidated damages, not as a penalty, the sum of Five Hundred dollars (\$500.00) for each calendar day of delay until the Punch List is completed.

48. TERMINATION OF THE CONTRACT

- 48.1. **TERMINATION FOR CONVENIENCE:** It is agreed that the College may, without any default of the Offeror, terminate this Agreement for the convenience of the College at any time upon a three (3) day notice to the Offeror. Such determination shall be at the sole discretion of the President. Upon such termination, the Offeror shall be paid within thirty (30) days after it shall submit to the College its requisition for payment such part of the consideration to be paid hereunder to the Offeror for its Work as the reasonable cost of the Work performed on the project by the Contractor at the time of such termination bears to the reasonable cost of the whole Work undertaken by the Contractor hereunder, plus the cost of any materials specifically purchased for the Work by the Contractor. Offeror shall not be entitled to recovery of anticipatory profits which have not been earned at the time of termination. Payment for materials shall be made only upon delivery of the materials to the site, and delivery of receipted invoices indicating payment in full therefore, and if requested by the College, releases of liens therefore, and such materials shall thereupon become the property of the College. Termination hereunder shall become effective by delivery to the Offeror of written notice of termination upon which the effective date of termination shall be specified.
- 48.2. **TERMINATION BY DEFAULT:** The College may, by written notice of default to the Contractor, terminate the whole or any part of the Contract whenever the Offeror shall default in the performance of this contract and fails to make progress in the prosecution of the contract work or endangers such performance and shall fail to cure default within ten (10) calendar days period after receipt of written notification from the College specifying the default. Should the contract be terminated by the College for failure to perform on the part of the Offeror, no additional compensation shall be paid. In case of failure to deliver services in accordance with the contract terms and conditions, the College, after due oral or written notice, may procure them from other sources and hold the Offeror responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the College may have. If, after notice of termination of this Contract under provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of the Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

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- 48.3. RIGHT TO STOP WORK:** If the College determines, either directly or indirectly, that the Offeror's performance is not within the specifications, terms or conditions, and/or that the quality of the job is unacceptable, the College has the right to stop the work. The stoppage of work shall continue until the default has been corrected and/or corrective steps have been taken to the satisfaction of the College. The College reserves the right to terminate the contract and also reserves the right to re-issue the solicitation for the contract if it is decided that performance is not within the specifications set out.
- 48.4. TERMINATION BASED ON LACK OF FUNDING:** Any contract awarded as a result of a College solicitation will be subject to funding and continued appropriation of sufficient funds for the contract. The appropriating authority for the College is deemed to be the Board of Trustees of Frederick Community College. Insufficient funds shall be grounds for immediate termination of solicitation.
- 49. TIME FRAME:** The Offeror is expected to complete the project in accordance with the Tentative Project Schedule.
- 50. PROJECT MANAGER:** A College will assign a project manager to this project. They will coordinate the activities of the Offeror with the College. Additionally, the College shall provide access to the areas covered by this solicitation, except as may be otherwise identified herein.
- 51. NON-HIRING OF EMPLOYEES:** No employees of the College or of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or attending the subject matter of this contract shall, during the pendency or term of this contract and while being employed, become or be an employee of Offeror.
- 52. NON-DISCRIMINATION:** Offeror represents and warrants that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of sex, race, age, color, creed, national origin, sexual orientation, religious belief, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. Offeror further agrees to post in conspicuous places notices setting forth the provisions of this non-discrimination clause and to take affirmative action to implement the provisions of this section. Offeror further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status, except as mandated by law.
- 53. ASSURANCE OF NON-CONVICTION OF BRIBERY:** Offeror hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal Government.
- 54. NON-COLLUSION:** Offeror certifies that it has neither agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer submitted; Offeror also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.

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- 55. DESIGN AND ENGINEERING DOCUMENTS:** Unless otherwise specified, the design and engineering documents (if applicable) furnished for this project shall be in accordance with industry standards.
- 56. UNDERSTANDING:** The submittal of a solicitation response shall indicate that the Offeror thoroughly understands the terms of this solicitation and is familiar with the requirements set forth to include submittal requirements by State of Maryland agencies: Maryland Higher Education Commission (MHEC), Department of General Services (DGS), and Department of Budget Management (DBM).
- 57. GOVERNING LAW/CODES:** Any contract entered into as a result of this solicitation will be governed by the laws of the State of Maryland. The Offeror shall at all times observe and comply with Federal, State of Maryland and local laws, ordinances, orders, codes and regulations and the articles and provisions of the Building Code(s) existing at the time of or enacted subsequent to the execution of a contract which in any manner affects the Offeror's ability to perform contractual requirements. This includes compliance with the current City of Frederick Land Management Code. In the event that a provision or specification in this solicitation is in conflict with applicable laws and regulations, the Offeror must inform the College, indicate such in its response, and propose alterations to the conditions specified.
- 58. FREDERICK COMMUNITY COLLEGE RESERVED RIGHTS:** The College reserves the right to adopt any or all portions of the Offeror's Bid/Proposal to best serve the needs of the College. The College also reserves the right to modify or waive minor irregularities and technical defects in the firm's Bid/Proposal if deemed to be in the best interest of the College.
- 59. CONTRACT TYPE AND PAYMENT SCHEDULES:** Precise payment date(s) will be finalized during contract negotiations. The College expects to pay only the primary firm for all work performed as a result of this solicitation. Thus, the primary firm will be obligated to appropriately compensate any and all consulting firms and/or subcontractors, if applicable.
- 60. JOINT VENTURES:** If the Offeror is a joint venture firm, the Offeror must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as specified. Additionally, all other information requested shall be provided on all parties. As part of the technical proposal submission, the Offeror must identify the responsibilities of each joint venture party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFP document. The information provided under this category of Profile of Offeror will be evaluated for each joint venture party based on its percentage of the joint venture firm. Joint ventures must also provide the following information:
- history of joint venture experience for all parties;
 - specific history of this joint venture relationship inclusive of the reasoning for the establishment of the joint venture on this project; and
 - a listing of all joint venture parties and each party's percentage of the joint venture firm. A copy of the signed, joint venture agreement must be provided to the College for its review and approval prior to issuance of the Notice to Proceed. In addition, no changes can be made to the joint venture agreement without the written approval of the College.

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Additionally, it should be noted that if the Offeror is a joint venture firm, of the five (5) projects submitted as relevant experience, a minimum of three (3) projects must be from the majority joint venture party.

- 61. REGISTERED SEX OFFENDERS:** Individuals who are registered sex offenders are not eligible to work on this project. The Contractor (and his subcontractors and suppliers) shall check the Maryland Department of Public Safety & Correctional Services' MARYLAND SEX OFFENDER REGISTRY and search for the name of any employee assigned to work on this project. This provision applies to all individuals that may be working on the Owner's property, making deliveries or visiting the owner's property for business purposes. In the event that a registered sex offender is discovered working on the Project, whether through employment by the Contractor, subcontractor, or equipment or material supplier, the Contractor shall immediately remove the individual from the premises and permanently terminate his work assignment. If the Contractor is found to have violated this provision subsequent to an award by the Owner, the Contract may be immediately terminated the Owner's sole discretion if the Contractor is unable to demonstrate he has exercised care and diligence in the past in checking the Maryland registry.

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ATTACHMENT A**

- A. Workers' Compensation Insurance as required by laws of the State of Maryland: Coverage A Statutory, Coverage B Employers Liability

Bodily Injury by Accident:	\$500,000.00 / accident
Bodily Injury by Disease:	\$500,000.00 / policy limit
Bodily Injury by Disease:	\$500,000.00 / each employee

- B. Commercial General Liability Insurance with limits of not less than:

General Aggregate Limit (other than products/completed operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

- C. Comprehensive Automobile Liability Insurance with limits of not less than:

Combined Single Limit of Liability Bodily Injury and Property Damage	\$1,000,000
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Coverage shall be applicable to all autos, owned, hired and non-owned.