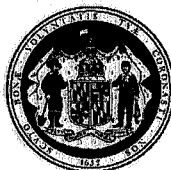


W. KEVIN HUGHES
CHAIRMAN

HAROLD D. WILLIAMS
LAWRENCE BRENNER
KELLY SPEAKES-BACKMAN



PUBLIC SERVICE COMMISSION

August 2, 2013

**Re: PSC #11-02-13 Continuity of Operations Plan ("COOP")
Amendment No. 1**

To Whom It May Concern:

This amendment is being issued to change, add or delete certain information contained in the above RFP as follows:

Change Section: 1.33 Minority Business Enterprise Goals to include the following information:

- 1.33.7 All documents, including **Attachment D**, completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered to be a part of the resulting Contract and are hereby expressly incorporated into reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see **Attachment A**, § 2.1).
- 1.33.8 Liquidated Damages will be assessed as per the provisions of Contract (Attachment A) Section 4.6 for the Contractor's failure to:
1. Submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3).
 2. Include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4)
 3. Comply with COMAR 21.11.03.12 in terminating, cancelling or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule.
 4. Meet the Contractor's total MBE participation goal and subgoal commitments (if subgoals are applicable).
 5. Promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the Prompt Payment provisions of this Contract.

Change the Contract to include the following section:

- 4.6 This Contract requires the Contractor to make good faith efforts to comply with the provisions of 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 provisions of the MBE Program and MBE contract

**PSC #11-02-13 Continuity of Operations Plan ("COOP")
Amendment No. 1, Page 2**

requirements. 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 MBE 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.

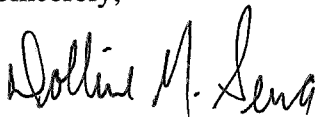
- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): **\$124.00** per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): **\$62.00** 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.
- 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.
- e. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the Prompt Payment provisions of this Contract: **\$465.00** per day until the undisputed amount due to the MBE subcontractor is paid.

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.

If you have questions concerning this amendment please follow the instructions for questions contained in the RFP Section 1.9.

An updated CONTRACT is attached.

Sincerely,



Dolline M. Serra
Procurement Officer
410-767-8009
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