



PASCALE STEVENS LLC
ATTORNEYS AT LAW



HOWARD S. STEVENS

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September 5, 2023

Via email only:

BOE.Clerk@BaltimoreCity.Gov

Board of Estimates Clerk
Mayor and City Council of Baltimore
City Hall
Baltimore, Maryland 21202

And

Via Email Only

William.Henry@BaltimoreCity.gov

Mr. William Henry, Comptroller
Office of the Comptroller for the Mayor and City Council of Baltimore
City Hall, Rm. 204
Baltimore, Maryland 21202

And

Via email only

Richard.Luna@BaltimoreCity.Gov

Mr. Richard J. Luna, Interim Director
Baltimore City Department of Public Works
200 N. Holliday Street, Rm. 600
Baltimore, Maryland 21202

Re: NOTICE OF PROTEST

Bid/Contract Solicitation: Water Contract No. 1327
Chlorine Handling Safety Improvements

Bid Date: March 15, 2023

Agenda date: September 6, 2023

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September 5, 2023

Re: NOTICE OF PROTEST

Bid/Contract Solicitation: Water Contract No. 1327
Chlorine Handling Safety Improvements

Bid Date: March 15, 2023

Dear Clerk of the Board of Estimates, Comptroller Henry, Members of the Board, and Interim Director Luna:

This office is legal counsel to The Whiting-Turner Contracting Company (“Whiting-Turner”), a bidder on the above referenced solicitation. In response to the solicitation, the Mayor and City Council of Baltimore (the “City”) received three (3) bids, including a bid submission from Allan Myers MD, Inc. (“Allan Myers”) in the amount of \$24,300,000.00, and bid from Whiting-Turner in the amount of \$24,898,000. As noted, a third bid was received but that bid was significantly higher than the bids submitted by Allan Myers and Whiting-Turner, which were the lowest two bids of all bids received.

Whiting-Turner has reviewed both the Original and Duplicate bid of Allan Myers, and based upon that review Whiting-Turner hereby protests the potential award of the Contract to Allan Myers on the basis that Allan Myers’ bid was non-responsive, and Allan Myers is therefore not susceptible of receiving the award of the Contract. Accordingly, Whiting-Turner’s bid should be deemed the lowest responsive and responsible bidder, Whiting-Turner should be awarded the Contract.

Discussion:

Article 5, Subtitle 28 of the Baltimore City Code contains requirements for participation by firms owned by certified Minority and Women’s Business Enterprises (or “M/WBEs”) in all City-issued contracts. To demonstrate compliance with the provision of Art. 5, Subtitle 28, each City-issued solicitation includes forms that must be completed by bidding contractors to certify each respective bidder’s commitment to achieving the MBE/WBE Participation goals. Bidders that are unable to meet the MBE/WBE Participation goals must seek a waiver as part of the bid submission.

The City’s standard MBE/WBE Participation forms were included in the solicitation as “Part B: MBE/WBE and Prime Contractor’s Statement of Intent”. Solicitation, p.94.¹ As explained herein, even though Whiting-Turner’s Total Bid price is slightly higher than that submitted by Allan Myer, Allan Myer’s bid was not responsive because of the flaws in its MBE/WBE Package.

For this solicitation the required minimum MBE Participation level is 16% of the total contract price, and the required minimum WBE participation level is 6% of the total contract price.² The standard Part B form includes distinct options for a bidding contractor to select and complete. First, it requires the bidder to identify whether the proposed M/WBE Participant is an MBE or a WBE. Next, the form requires the bidder to “List the City certified Work and/or Services to be performed by the [M/WBE Participant]” or to identify the “Materials/Supplies to be furnished by [the M/WBE Participant.” See, Bid Package attachment for reference.

¹ For convenience, the term “MBE/WBE Package” shall be used herein to refer collectively to the documents and other information evidencing the bidder’s commitment to achieve the required MBE/WBE Participation for the solicitation.

² Copies of the relevant pages from Allan Myers’ Bid Package are attached hereto as exhibits for convenience.

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For both its MBE and WBE Participation designations, Allan Myers has completed its Part B forms in a manner that is non-responsive.

First, for its MBE contractor Allan Myers proposed to use Native Sons LTD (City Certification No. 04-004521) ("Native Sons") to satisfy the full 16% of the MBE Participation goal. However, even though Native Sons is only certified by the City for providing construction services, Allan Myers's bid indicates that it anticipates expending the total of 16% MBE goal (or \$3,900,000 of the bid price) for "Electrical construction and material supply", without designating what portion of the price will be for "electrical construction" services, and what portion will be for the purchase of "materials." Since Native Sons is not certified for the supply of materials, Allan Myers' use of Native Sons for the supply of construction materials is erroneous and the bid is therefore non-responsive.

A similar concern is presented for Allan Myers' WBE participation commitment as well. For its WBE Participation Form, Allan Myers completed the Part B Statement of Intent Form and identified Tegeler Construction & Supply ("Tegeler"), a proposed City Certified WBE (Certification No. 17-373982MD), as the WBE that it will use to satisfy the entirety of the WBE compliance, which was set at 6% of the total contract price. *Id.* On the WBE Part B form Allan Myers stated that it intended to allocate 6% of its Total Bid Price (or the net amount of \$1,460,000) to Tegeler. The defect with Allan Myers' Part B WBE form, and therefore with Allan Myers' total MBE/WBE Package is that Allan Myers completed the blank lines for both the "Services to be performed" portion as well as for the "Materials/Supplies to be furnished" portion of the form, without having designated the total portion of the \$1,460,000 to be allocated to either of the two specific categories. As discussed below, the allocation of any portion of the 6% of the contract price results in Allan Myers failing to achieve the total participation goal in its entirety.

Argument:

Allan Myers' bid is defective and must be rejected because as submitted, Allan Myers' bid does not satisfy the minimum MBE/WBE Participation Goals.

Per MBE/WBE participation regulations, a bidding contractor is entitled to receive 100% credit for the value of *Construction Services* performed by a certified MBE/WBE "Subcontractor" (as defined per City Code, Art. 05, §28-1(o)), but is only entitled to receive credit of 25% of the total value of Materials/Supplies purchased when the Supplier in question is a non-manufacturing supplier (as defined per City Code, Art. 05, §28-1(p)). *See*, §28-37(c)(2).

Given the fact that Allan Myers has allocated the entire 16% of the required MBE Participation to Native Sons through an undisclosed blend of both "electrical construction" services and "material supply", the total goal of 16% cannot be achieved because Native Sons is not a certified supplier of construction materials, and Allan Myer is only entitled to receive 25% credit for any portion of materials purchased through any subcontract with an M/WBE Participant.

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Similarly, Allan Myer cannot achieve the total WBE Participation of 6% through utilizing Tegeler because Tegeler is only a non-performing supplier of construction materials³ within the meaning of Art. 05, §28-37(c)(2) of the Code, and Tegeler does not provide construction services. As with Native Sons, since Allan Myers' bid proposes that it will dedicate 6% of the total bid price to the purchase of both services and materials from Tegeler, Allan Myers' bid is non-responsive because any portion of the total of \$1,460,000 of construction materials from Tegeler results in only 25% credit towards the overall goal.

With both MBE/WBE Participations, even if the respective participants were to perform a mix of construction services and the supply of construction materials as well, Allan Myers' bid must be rejected as non-responsive because under the City Code a bidder only receives 25% of the dollar value dedicated to the purchased construction materials. Therefore, the purchase of any materials through either of the two Participants will result in Allan Myers failing to achieve the minimum goals of 16% and 6% respectively. Moreover, since Allan Myers has only committed to satisfying the minimum goals as a percentage of the total bid price, Allan Myers' overall bid is defective and non-responsive.

Again, Allan Myers' bid is defective because Allan Myers may only receive credit of 25% for the purchase of construction materials from either of its two proposed MBE/WBE Participants and the actual purchase of any materials through either Participant will drop the total overall participation levels below the stated goals of the contract.

Given the above, which arguments are supported by Native Sons' City Certification Statement, and statements appearing on Teger's own website, Whiting-Turner respectfully protests the award of the contract to a bidder other than Whiting-Turner.

Very truly yours,



Howard S. Stevens

HSS:

Enclosures

Cc: Mr. W. Michael Mullen, Esq. Baltimore City Office of Law
Mr. Christopher Collins
Mr. Daniel W. China, Esq.

³ See, Teger website found at <http://www.tegelercs.com> and attached hereto as an exhibit.

SB-23-12726 - Construction Award of Water Contract No. 1327-Chlorine Handling Safety Improvements

ACTION REQUESTED:

The Board is requested to approve a Construction Contract Award with Allan Myers MD, Inc..
Period of agreement is: Based on Board Approval

AMOUNT AND SOURCE OF FUNDS:

Transaction Amount: \$ 24,300,000.00
Project #: W.C. 1327

Project Fund	Amount
9960-PRJ000772-GRT000666-CAP009557-SC630404	\$ 24,300,000.00

BACKGROUND/EXPLANATION:

On Wednesday, March 15, 2023, your Honorable Board opened three (3) bids for the subject contract. Bids ranged from a low of \$24,300,000.00 to a high of \$31,877,000.00. Allan Myers MD, Inc. bid is 25.01% above the Engineer's Estimates of \$19,437,629.13 due to competitive bidding market. A tabulation is attached.

PRINCIPAL ITEMS OF WORK FOR THIS PROJECT IS: Chlorine Handling Safety Improvements at Montebello Filtration Plants 1 and 2, and at five remote sites located in Baltimore County.

EMPLOY BALTIMORE:	LIVING WAGE:	LOCAL HIRING:	PREVAILING WAGE:
N/A	N/A	Applicable	N/A

MBE / WBE PARTICIPATION:

MBE Goal %	16.05%	MBE Goal Amount	\$ 3,900,000.00
Native Sons, LTD			
WBE Goal %	6.01%	WBE Goal Amount	\$ 1,460,000.00
Tegeler Construction and Supply			

COUNCIL DISTRICT: Citywide

ENDORSEMENTS:

BAPS has reviewed and approved for funds.
MWBOO has reviewed and approved

MAYOR AND CITY COUNCIL OF BALTIMORE CITY
BALTIMORE CITY CODE, ARTICLE 5, SUBTITLE 28
MINORITY AND WOMEN'S BUSINESS PROGRAM

**MBE AND WBE PARTICIPATION
COMMITMENT FORMS**

Name of Bidder (Proposer) ALLAN MYERS MD, INC.

Address P.O. BOX 278 FALLSTON, MD 21047

Contracting Agency: DPW, OFFICE OF ENGINEERING AND CONSTRUCTION

Contract (Project) Title: CHLORINE HANDLING SAFETY IMPROVEMENTS

Contract Number: WATER CONTRACT NO. 1327

Bid Due Date: February 1, 2023

The Overall MBE goal is 16 % The WBE goal is 6 %

If MBE Sub-Goals Apply:

African American	<u>NA</u>	%
Asian American	<u>NA</u>	%
Hispanic American	<u>NA</u>	%
Native American	<u>NA</u>	%

**THIS PACKAGE OF MBE AND WBE PARTICIPATION
COMMITMENT FORMS IS DUE WITH THE BID.**

FOR MORE INFORMATION OR ASSISTANCE WITH THESE FORMS CONTACT:

Minority and Women's Business Opportunity Office (MWBOO)
Baltimore City Department of Law
Room 101, City Hall
100 N. Holliday Street
Baltimore, MD 21202
(410) 396-4355
E-Mail: MBWOOCompliance@baltimorecity.gov (Attention: MBE/WBE Bid Packet)

Rev: 2/11/2021

MBE AND WBE PARTICIPATION
COMMITMENT FORMS

Name of Bidder (Proposer): ALLAN MYERS MD, INC.

Address: P.O. BOX 270 FALLSTON, MD 21047

Contracting Agency: CITY OF BALTIMORE DPW

Contract (Project) Title: CHLORINE HANDLING SAFETY IMPROVEMENTS

Contract Number: W.C. No. 1327

Bid Due Date: February 1, 2023

The MBE goal is 16 % The WBE goal is 6 %

If MBE Sub-Goals Apply: (the MBE sub-goals will be listed in the solicitation, if there are no MBE sub-goals listed please leave blank)

African American: ___% Asian American: ___% Hispanic American: ___% Native American: ___%

PART B: MBE/WBE AND PRIME CONTRACTOR'S STATEMENT OF INTENT

COMPLETE A SEPARATE FORM FOR EACH MBE and WBE NAMED IN THIS BID.
(You are permitted to make additional copies of this form as needed). **PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 3A and 3F.**

Contract Number: Water Contract No. 1327

Name of Prime Contractor: Allan Myers MD, Inc.

Name of Baltimore City Certified Subcontractor: NATIVE SONS LTD

City Certification Number: 04-004521 MBE WBE

List the City certified Work and/or Service to be performed by MBE or WBE:
(The selected MBE and/or WBE above must be City certified for the work/service being performed)

Electrical construction and material supply

Materials/Supplies to be furnished by MBE or WBE:

Percentage of work to be performed by MBE or WBE: 16.00 %

Dollar Amount to be paid to MBE or WBE for work performed: \$ 3,900,000.00
(If MBE sub-goals apply, please list the percentage for this Statement of Intent.) (the MBE sub-goals would be listed in the solicitation, if there are no MBE sub-goals listed please leave blank)

African American: ___% Asian American: ___% Hispanic American: ___% Native American: ___%

The undersigned Prime Contractor and Subcontractor agree to enter into a contract for the work/service indicated above for the percentage and corresponding dollar amount listed to meet the MBE/WBE participation goals. This form is subject to the Prime Contractor's execution of a contract with the City of Baltimore. The Subcontractor is currently certified as an MBE or WBE with the City of Baltimore Minority and Women's Business Opportunity Office to perform the work described above.

Richard W. Dungan 3/15/2023
Signature of Prime Contractor (REQUIRED) Date

rich.dungan@allanmyers.com 410-776-2015
Email Address Phone

Michael T. Mikeo 3/13/23
Signature of MBE or WBE (REQUIRED) Date

mikeo@nativesons.org 410-298-2208
Email Address Phone

PLEASE NOTE: CHANGES TO INFORMATION ON PART B: MBE/WBE AND PRIME CONTRACTOR'S STATEMENT OF INTENT THAT ARE MATERIAL TO THE AGREEMENT BETWEEN THE PRIME CONTRACTOR AND MBE OR WBE MUST BE INITIALED BY BOTH PARTIES.

PART B: MBE/WBE AND PRIME CONTRACTOR'S STATEMENT OF INTENT

COMPLETE A SEPARATE FORM FOR EACH MBE and WBE NAMED IN THIS BID.
 (You are permitted to make additional copies of this form as needed). **PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 3A and 3F.**

Contract Number: Water Contract No. 1327

Name of Prime Contractor: Allan Myers MD, Inc.

Name of Baltimore City Certified Subcontractor: Tegeler Construction & Supply

City Certification Number: #17-373982 MD MBE x WBE

List the City certified Work and/or Service to be performed by MBE or WBE:
 (The selected MBE and/or WBE above must be City certified for the work/service being performed)

Industrial Building Construction, Framing contractors, Painting contractors

Materials/Supplies to be furnished by MBE or WBE:
Brick, Stone, and related construction material merchant wholesaler

Percentage of work to be performed by MBE or WBE: 6.00 %

Dollar Amount to be paid to MBE or WBE for work performed: \$ 1,460,000.⁰⁰
 (If MBE sub-goals apply, please list the percentage for this Statement of Intent.) (the MBE sub-goals would be listed in the solicitation, if there are no MBE sub-goals listed please leave blank)

African American: % Asian American: % Hispanic American: % Native American: %

The undersigned Prime Contractor and Subcontractor agree to enter into a contract for the work/service indicated above for the percentage and corresponding dollar amount listed to meet the MBE/WBE participation goals. This form is subject to the Prime Contractor's execution of a contract with the City of Baltimore. The Subcontractor is currently certified as an MBE or WBE with the City of Baltimore Minority and Women's Business Opportunity Office to perform the work described above.

Richard W. Dungan
 Signature of Prime Contractor (REQUIRED)

03/15/2023
 Date

rich.dungan@allanmyers.com
 Email Address

410-776-2015
 Phone

Britt Arnold
 Signature of MBE or WBE (REQUIRED)

3/13/2023
 Date

britt@tegelercs.com
 Email Address

443-990-0353
 Phone

PLEASE NOTE: CHANGES TO INFORMATION ON PART B: MBE/WBE AND PRIME CONTRACTOR'S STATEMENT OF INTENT THAT ARE MATERIAL TO THE AGREEMENT BETWEEN THE PRIME CONTRACTOR AND MBE OR WBE MUST BE INITIALED BY BOTH PARTIES.

PART D: MBE/WBE PARTICIPATION AFFIDAVIT

The Undersigned authorized representative of Contractor does hereby make the following Affidavit: Contractor read the Bidder Information and Instructions regarding the MBE/WBE Program. Contractor acknowledges that of 16 % and the WBE goal of 6 % for this contract. Contractor has achieved the following par

MBE 16 % and \$ 3,900,000.⁰⁰

WBE 6 % and \$ 1,460,000.⁰⁰

of the total contract amount which is \$ 24,300,000.⁰⁰

My firm has made good faith efforts to achieve the MBE and WBE participation goals for this contract. I understand that, if awarded the contract, my firm must submit to the Minority and Women's Business Opportunity Office copies of all executed agreements with the MBE and WBE firms being utilized to achieve the participation goals and other requirements of Article 5, Subtitle 28 of the Baltimore City Code. I understand that these documents must be submitted prior to the issuance of a notice to proceed.

I understand that, if awarded the contract, my firm must submit to the MWBOO the Subcontractor Utilization Reports, canceled checks, and any other documentation and reports required by MWBOO verifying payments to the MBE and WBE firms utilized on the contract, including electronic verification.

I understand that, if awarded this contract and I find that I am unable to utilize the MBEs or WBEs identified in my Statements of Intent, I must substitute other certified MBE and WBE firms to meet the participation goals. I understand that I may not make a substitution until I have obtained the written approval of MWBOO.

I understand that, if awarded this contract, authorized representatives of the City of Baltimore may examine, at any time, the books, records and files of my firm to the extent that such material is relevant to a determination of whether my firm is complying with the MBE and WBE participation requirements of this contract.

I do solemnly declare and affirm under the penalty of perjury that the contents of the foregoing Affidavit are correct to the best of my knowledge, information, and belief.

ALLAN MYERS MD, INC.
Contractor Company Name

Richard W. Dungan
Signature

RICH DUNGAN @ ALLANMYERS.COM
Email Address and Phone 410-776-2015

RICHARD W. DUNGAN - PRESIDENT
Print Name and Title

Certified Profile

CLOSE WINDOW 

[Print](#)

Business & Contact Information

BUSINESS NAME Native Sons, LTD., DBA **A/K/A NATIVE SONS, LTD**

OWNER Mr. FRANK CHAPMAN

ADDRESS 2603 N Rolling Road
Suite 310
Windsor Mill, MD 21244 [\[map\]](#)

PHONE 410-298-2208 Ext. 201

FAX 443-200-2918

EMAIL lindsayf@nativesons.org

WEBSITE <http://nativesons.org/>

ETHNICITY Native American

Certification Information

CERTIFYING AGENCY City of Baltimore

CERTIFICATION TYPE MBE - Minority Business Enterprise

EXPIRATION DATE 12/24/2024

CERTIFIED BUSINESS DESCRIPTION 238210 - Electrical Contractors and Other Wiring Installation Contractors; 238990 - All Other Specialty Trade Contractors

Commodity Codes

Code	Description
NAICS 238210	Electrical Contractors and Other Wiring Installation Contractors
NAICS 238990	All Other Specialty Trade Contractors

Additional Information

MARKET AREA REGION Baltimore County

CERTIFICATION NUMBER

04-004521-MBE

Certified Profile

CLOSE WINDOW 

[Print](#)

Business & Contact Information

BUSINESS NAME Tegeler Construction & Supply

OWNER MS. BRITTANY TEGELER

ADDRESS 6001 Erdman Avenue
Baltimore, MD 21205 [\[map\]](#)

PHONE 443-990-0353

EMAIL britt@tegelercs.com

WEBSITE <http://WWW.TEGLERSOURCE.COM>

ETHNICITY Caucasian

Certification Information

CERTIFYING AGENCY City of Baltimore

CERTIFICATION TYPE WBE - Women Business Enterprise

EXPIRATION DATE 9/9/2024

CERTIFIED BUSINESS DESCRIPTION 236115 - New Single-Family Housing Construction (except For-Sale Builders); 236116 - New Multifamily Housing Construction (except For-Sale Builders); 236210 - Industrial Building Construction; 238130 - Framing contractors; 238320 - Painting and Wall Covering Contractors; 238330 - Flooring Contractors; 238340 - Tile and Terrazzo Contractors; 238910 - Site Preparation Contractors; 423310 - Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers; 423320 - Brick, Stone, and Related Construction Material Merchant Wholesalers; 423330 - Roofing, Siding, and Insulation Material Merchant Wholesalers; 423510 - Metal Service Centers and Other Metal Merchant Wholesalers; 423720 - Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers; 423840 - Industrial Supplies Merchant Wholesalers; 424610 - Plastics Materials and Basic Forms and Shapes Merchant Wholesalers; 425120 - Wholesale Trade Agents and Brokers

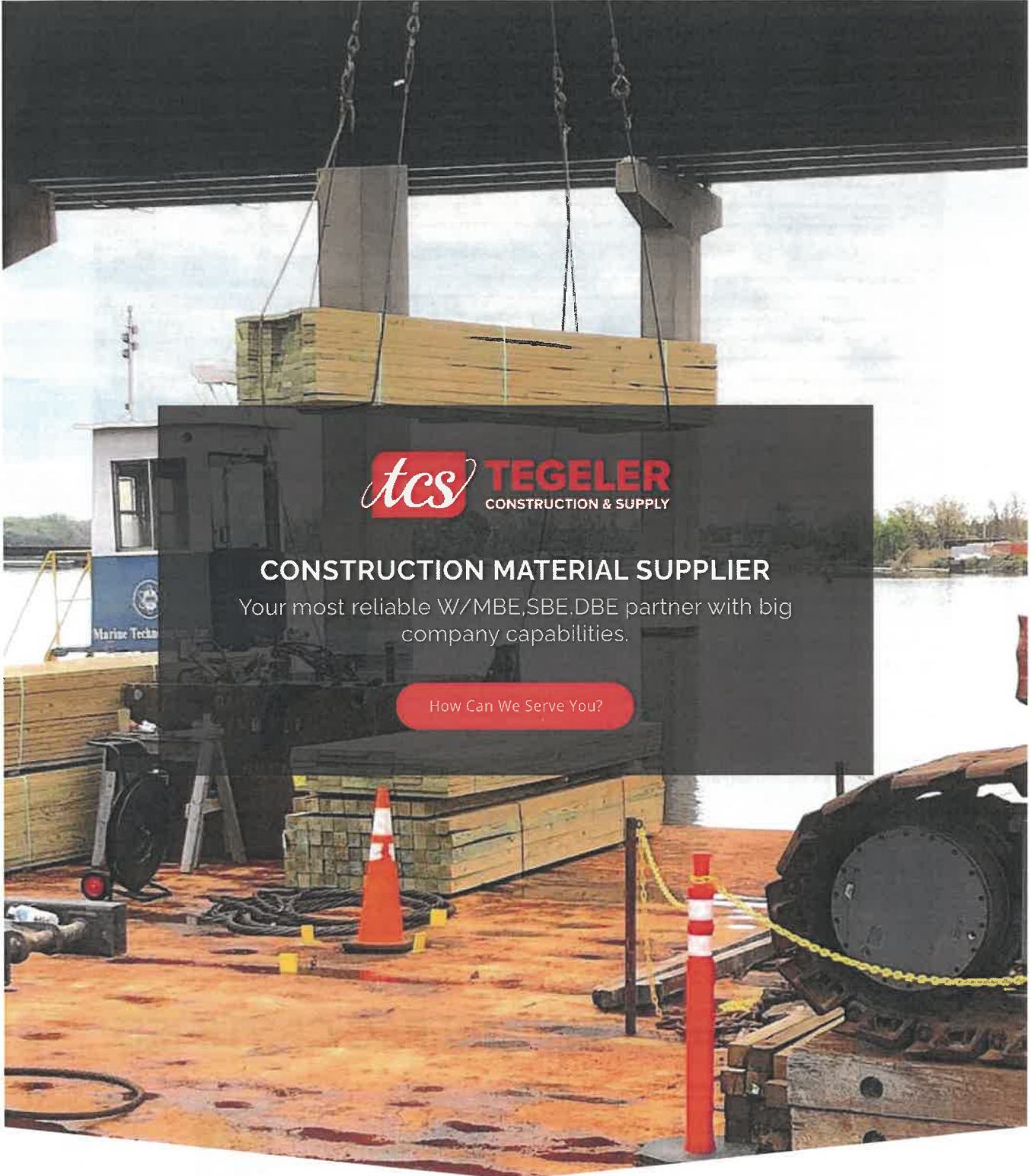
Commodity Codes

Code	Description
NAICS 236115	New Single-Family Housing Construction (except For-Sale Builders)
NAICS 236116	New Multifamily Housing Construction (except For-Sale Builders)

NAICS 236210	Industrial Building Construction
NAICS 238130	Framing contractors
NAICS 238320	Painting and Wall Covering Contractors
NAICS 238330	Flooring Contractors
NAICS 238340	Tile and Terrazzo Contractors
NAICS 238910	Site Preparation Contractors
NAICS 423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
NAICS 423320	Brick, Stone, and Related Construction Material Merchant Wholesalers
NAICS 423330	Roofing, Siding, and Insulation Material Merchant Wholesalers
NAICS 423510	Metal Service Centers and Other Metal Merchant Wholesalers
NAICS 423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
NAICS 423840	Industrial Supplies Merchant Wholesalers
NAICS 424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
NAICS 425120	Wholesale Trade Agents and Brokers

Additional Information

MARKET AREA REGION	Baltimore City
CERTIFICATION NUMBER	17-373982-MBE



CONSTRUCTION MATERIAL SUPPLIER

Your most reliable W/MBE,SBE,DBE partner with big company capabilities.

How Can We Serve You?





Who We Are

Tegeler Construction & Supply is a construction material supplier headquartered in a 100,000 SF space at Tradepoint Atlantic in Baltimore, Maryland. We are W/MBE, DBE, SBE certified and FSC®-certified. Look for our FSC®-certified products. We serve projects of all sizes up and down the East Coast in the commercial, multifamily, and institutional space, with specialized focus on heavy civil projects.

Check out our core product offerings for [Vertical Construction](#) and [Horizontal Construction](#).

Do not see what you are looking for? Not to worry, as we have the ability to source a wide-ranging array of products via one of our many trusted manufacturer partnerships. [Just ask!](#)

W/MBE, SBE, DBE And FSC CERTIFIED



Additional Company Information

View our NAICS Codes, Certification Numbers, and Specific Product Offerings.



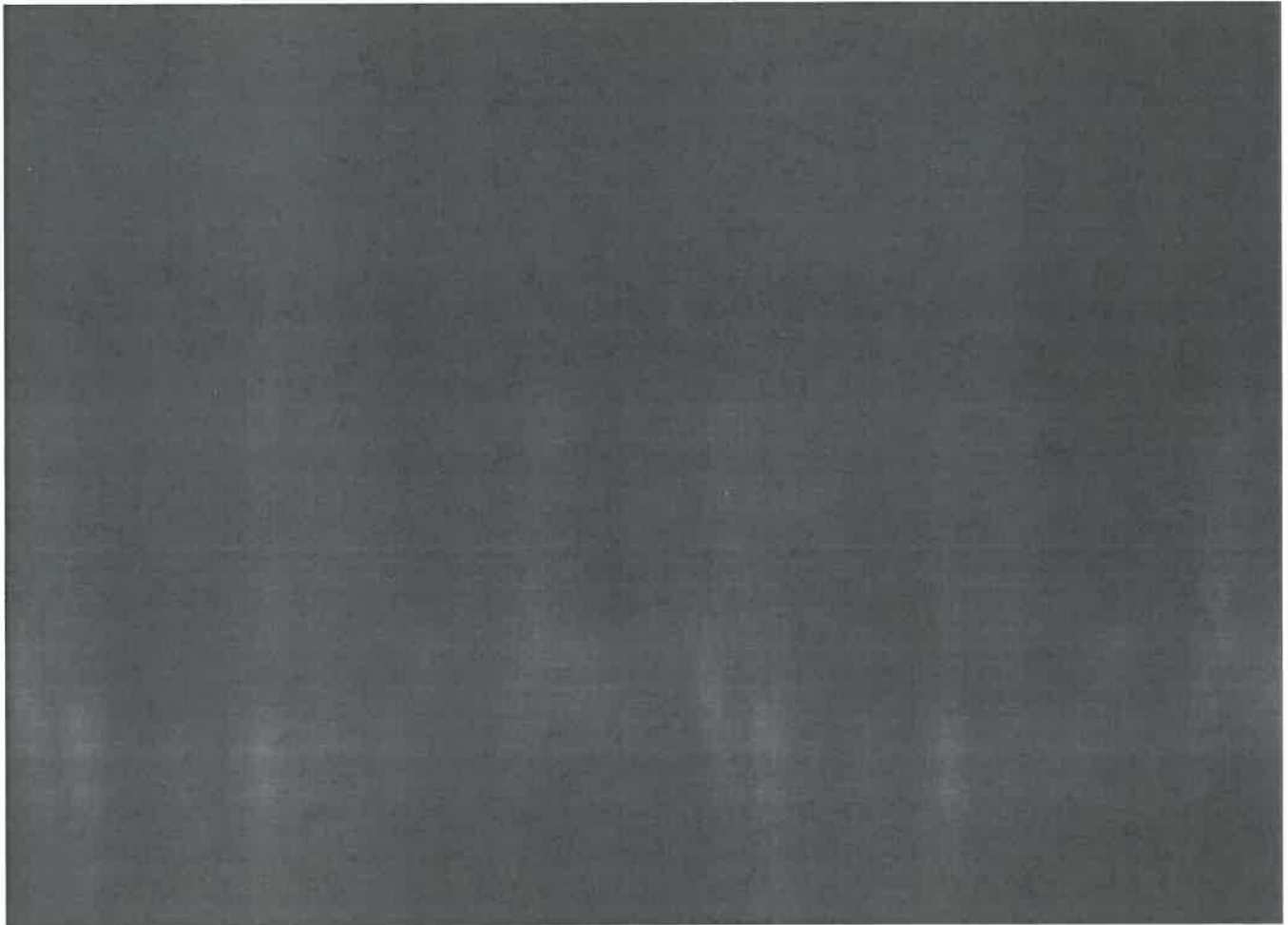
Horizontal Construction

Vertical Construction

NAICS Codes

Featured Projects





Our Trusted Customers



Tegeler Construction & Supply

ADDRESS

1900 Finishing Mill Rd. Suite 100
Sparrows Point, MD 21219

PHONE NUMBER

(443) 990-0353

ADDRESS

6001 Erdman Ave.
Baltimore, MD 21205

PHONE NUMBER

(443) 990-0353



Let's Connect

First Name

Last Name

Email

Phone

Company Name

How Can we Help?

Connect Now

We Offer Favorable Financing Options To Help Grow Your Business!

Apply today via our user-friendly online credit application.

Credit Application



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