

THE UNIVERSITY SYSTEM OF MARYLAND PROCUREMENT POLICIES AND PROCEDURES



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UNIVERSITY SYSTEM OF MARYLAND PROCUREMENT POLICIES AND PROCEDURES

Approved by the University System of Maryland Board of Regents on
December 3, 1999

Approved by the Board of Public Works on February 9, 2000

UNIVERSITY SYSTEM OF MARYLAND PROCUREMENT POLICIES AND PROCEDURES

SECTION I. - INTRODUCTION

The Board of Regents of the University System of Maryland approved on December 3, 1999, these procurement policies and procedures for the governance of procurements by the University System of Maryland consistent with the mandate of Chapter 515 of the Laws of 1999. Furthermore, the Board of Regents has delegated to the Chancellor of the University System of Maryland the authority to implement and to delegate, as appropriate, to the presidents of the constituent institutions, to the extent permitted by Board of Regents policy, authority to implement these policies and procedures.

SECTION II. - AUTHORITY AND DELEGATION

Pursuant to Chapter 515 of the Laws of 1999, Higher Education-University System of Maryland-Coordination, Governance and effective July 1, 1999, “except as provided in Section 11-203(E) of the State Finance and Procurement Article...the University System of Maryland is exempt from Division II of the State Finance and Procurement Article.”

SECTION III. - PURPOSE

These procurement policies and procedures are designed to support and facilitate the educational, research, and public service missions of the University System of Maryland and its constituent institutions through the acquisition of goods and services by applying best methods and business practices that provide for public confidence in the System.

This document employs policies that are relevant to the USM institution environment while providing for a procurement process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the procurement process, and uniform procurement procedures. These values promote the purposes of State procurement law, strike a balance between needed institution self-management and the Board of Regents’ responsibility to govern the System.

SECTION IV. - APPLICABILITY

A. General Applicability

1. These Policies and Procedures apply to contracts by the University System of Maryland and its constituent institutions for the acquisition, rental, purchase or lease of supplies, Services, Maintenance, Capital Improvements, and Architectural and Engineering services.

2. A procurement contract executed before the effective date of these Policies or Procedures shall be governed by those laws, policies, and procedures in effect at the time of the contract execution.
3. Subcontracts and sub-recipients and other agreements entered into by the University in fulfilling its obligations under federal, state, local and private grants and contracts are not procurement actions and are therefore not subject to these Policies and Procedures.
4. The Board of Regents may, from time to time, amend these policies and procedures in order that they remain consistent with current best methods and business practices. These changes shall be submitted to the Administrative, Executive, and Legislative Review committee of the Maryland General Assembly for comment.

B. Exclusions

These policies and procedures do not apply to:

1. The lease, sale, purchase, transfer, disposal or any other action involving an interest in Real Property.
2. The sale, transfer and disposal of surplus personal property.
3. Collaborative undertakings that support the mission of the University.
4. Reimbursement contracts for which user eligibility and cost is set by law or by rules and regulations (e.g. Medicaid).
5. Intergovernmental contracts or like-business agreements.
6. Purchases for the purposes of resale or remanufacture and subsequent resale.
7. Agreements creating contractual employee relationships.
8. Cultural, entertainment, intercollegiate athletic contracts, and exhibitions or displays on university property.
9. Surveying and evaluating architecturally, archaeologically, historically or culturally significant properties, and other than as to architectural services, preparing historic preservation planning documents and educational material.
10. Protection and administration of intellectual property rights,

11. Housing, food and related supply or service contracts for conference facilities
12. Contracts of the University System of Maryland and its constituent institutions for programs and operations located or implemented out of the United States.
13. Any procurement or contract to the extent of any conflict with a governing federal law, regulation, assistance instrument, or other requirement; or the terms of any gift.
14. Contracts for the purchase, use, or development of curricular materials.

SECTION V. - PROCUREMENT METHODS

Set forth below are the generally accepted methods of procurement, which may be adjusted, from time to time in the best interest of the University to reflect current business practices. Each institution of the USM shall be responsible for developing policies and procedures for use of the following methods that are consistent with those set forth below and with the needs of the individual institutions.

A. Simplified Procurement Procedures

1. Simplified Procurement Limit

The Simplified Procurement limit is \$100,000. Institutions may establish and implement their own Simplified Acquisition policies and procedures for purchases under \$100,000. An Institution may establish its own Simplified Procurement threshold based on its own requirements, but that limit may not exceed \$100,000. Procurement requirements shall not be artificially divided so as to constitute simplified procurements.

2. Procurements Using a Purchasing Card

The preferred method of purchase is using the purchasing card in accordance with the policies and procedures set forth at individual institutions.

3. Non-competitive Small Procurement Orders

Where the simplified procurement order does not exceed \$5,000, competition is preferred, but is not required.

4. Competitive Simplified Procurements

For orders between \$5,000 and \$100,000 competition shall be sought to the extent practical, as determined by the Procurement Officer, considering such factors as the availability of vendors, dollar value of the procurement, cost of administering the procurement, time available to make the procurement including delivery time, and sound business judgment, consistent with the above.

(a) The Procurement Officer shall solicit quotations from a reasonable number of sources.

(b) The Procurement Officer may consider factors such as the following when deciding how many quotations will be solicited:

- (i) Nature of the item or service to be purchased and whether it is highly competitive and readily available; or if it is relatively non-competitive;
 - (ii) Information obtained in making recent purchases of the same or similar item(s);
 - (iii) The urgency of the proposed purchase;
 - (iv) The dollar value of the proposed purchase; and
 - (v) Past experience concerning a specific vendor's pricing.
- (c) To the extent practicable, solicitations shall be published in a manner that best meets the needs of the solicitation. Examples of resources available to the Procurement Officer for publishing a solicitation include but are not limited to:
- (i) Bid Board
 - (ii) Maryland Contract Weekly
 - (iii) Trade Journals
 - (iv) Business Journals
 - (v) World Wide Web

5. Records

Adequate records shall be kept for simplified procurements and may include the following:

- (a) Name of authorized purchaser
- (b) Date of purchase
- (c) Name of vendor
- (d) If applicable, charge slip or telephone purchasing card log
- (e) Itemized receipt, packing slip, or itemized repair order, if applicable
- (f) Copy of written or published solicitation, if used
- (g) Solicitation documentation including names of vendors, copies of any written responses received, bid or offer amounts, basis for the award, identification of MBE/SBE vendors, or copy of sole source justification or explanation for single bid response
- (h) Copy of certification by appropriate fiscal authority of fund availability to satisfy the contractual requirement
- (i) Copy of purchase order or contract.

6. Modifications

Modifications to a simplified procurement shall be made in accordance with good business practice.

7. Required Contract Clauses

In addition to those terms, conditions and specifications necessary to the particular procurement, a simplified acquisition shall include the University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document.

B. Competitive Sealed Bidding

1. Use of Competitive Sealed Bids

Competitive Sealed bidding, also called “Invitation for Bid”, is a method of procurement which results in a contract awarded to the lowest evaluated responsive bid from a responsible bidder based on the specifications set forth in the solicitation. Competitive sealed bids may be used. Typical reasons why Competitive Sealed Bids may be used include:

- (a) The award will be made on the basis of price and other price related factors
- (b) It is not necessary to conduct negotiations with the responding sources about their bids
- (c) Time permits the solicitation, submission and evaluation of sealed bids
- (d) There is a reasonable expectation of receiving more than one sealed bid

2. Required Solicitation Clauses

In addition to those terms, conditions and specifications necessary to a particular procurement, a written solicitation for competitive sealed bids must include the University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document.

3. Publishing

Invitations for bids shall be published in a manner that best meets the needs of the solicitation. Examples of resources available to the Procurement Officer for publishing a solicitation include but are not limited to:

- (a) Bid Board
- (b) Maryland Contract Weekly *
- (c) Trade Journals
- (d) Business Journals
- (e) World Wide Web

* All invitations for bids shall be published in the Maryland Contract Weekly provided that doing so is consistent with the time requirements of the procurement.

4. Number of Bidders

It is the responsibility of the Procurement Officer to seek bids from an adequate number of suppliers.

5. Bid Due Date

It is the responsibility of the Procurement Officer to provide a reasonable time for prospective bidders to prepare and submit bids.

6. Pre-Bid Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-bid conferences is not mandatory.

7. Amendments or Addenda

If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential bidders that are known to have received a copy of the solicitation. All amendments shall include a statement to the effect that bidders are required to acknowledge receipt of any amendments to the request for bids. If appropriate, the due date shall be adjusted to insure that sufficient time is given to prospective bidders to consider the information contained in the amendment for preparation of their responses.

8. Bid Opening

- (a) Once received, all bids and modifications to bids shall be placed in a secure place until the date and time for the bid opening. After the receipt of bids and before the bid opening, the University shall not disclose the identity of any bidder.
- (b) Bids are to be opened publicly. The name, bid price and other relevant information shall be read aloud or otherwise made available to those in attendance at the bid opening.
- (c) All bids received must be recorded, tabulated or summarized.
- (d) At a reasonable time, after the bid opening, all bids are available for public inspection.

9. Late Bids, Late Withdrawals, and Late Modifications

- (a) Any bid, request for withdrawal, or modification of a bid that is not received at the designated location, time, and date set forth in the

bid documents will be considered late and will not be considered. Delivery of the bid to the specified location at the prescribed time and date is the sole responsibility of the bidder.

- (b) At the sole discretion of the Procurement Officer, exceptions may be made only when the reason for the late bid, late request for withdrawal or late modification of a bid, is due to the action or inaction of the Institutions personnel directing the procurement activity or their employees.
- (c) A record of the late bid, request for withdrawal, or modification of a bid, shall be made in the appropriate procurement file.

10. Form of Bids

Bids must be submitted in writing by the specified due date and time. If bids are to be permitted by other than written and signed documents, that must be stated in the bid documents. Bids may be submitted via such other forms (i.e., fax, electronic, etc.) as the bid documents specifically allow.

11. Bid Requirements

- (a) Bids shall be based upon the specifications contained in the solicitation.
- (b) Unless provided for in the solicitation documents that electronic forms of bid transmission are acceptable, each bid shall be typewritten or written legibly in ink.
- (c) If in writing, all erasures or alterations shall be initialed in ink by the person who signs the bid.
- (d) Unless otherwise indicated in the bid documents, each bid shall be submitted in an envelope that clearly indicates that it contains a bid and identifies the bid by the bid number.

12. Mistakes, Errors, and Withdrawals of Bids

- (a) Technicalities or minor irregularities in bids may be waived if the Procurement Officer determines that it shall be in the university's best interest. The Procurement Officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to the university's advantage to do so.
- (b) A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawal or correcting the bid as provided in Section V.B.9.
- (c) If the Procurement Officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid

unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon the written approval of the Procurement Officer if any of the following conditions are met:

- (i) If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- (ii) A bidder may be permitted to withdraw a low bid if:
 - (a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (b) The bidder submits proof of evidential value that clearly and convincingly demonstrates a mistake was made.
- (d) Mistakes may not be corrected after award of the contract except when the Procurement Officer makes a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted. Corrections shall be submitted to and approved in writing by the Procurement Officer.
- (e) When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Officer shall prepare a determination showing that the relief was granted or denied in accordance with these policies and procedures.

13. Bid Evaluation and Award

- (a) Unless otherwise specified in the solicitation documents, bids shall remain irrevocable for a period of 90 days after the bid opening. If the Procurement Officer determines that this is not sufficient time to make an award, the time may be extended upon written request to the bidders. The Procurement Officer shall request of each bidder, that his bid shall continue to be irrevocable for the specified period of time.
- (b) An award will be made to the bidder offering the most favorable price that has been determined to be both responsible and responsive in meeting the requirements set forth in the solicitation. The Institution may make multiple awards if it is deemed to be in the best interest of the Institution, and if provided for in the solicitation. Bids may not be evaluated on criteria other than those set forth in the solicitation documents.
- (c) The Institution reserves the right to make an award as a total, item by item or by groups of items as determined to be in the best interest of the Institution.
- (d) If a single bid is received in response to a solicitation and the Procurement Officer determines that the bid is responsive and from a responsible bidder and other bidders had a reasonable opportunity

to respond, a negotiated award may be made if it is determined by the Procurement Officer to be in the best interest of the University.

- (e) Unless it is specifically stated in the solicitation that multiple or alternate bids will be accepted, they may not be accepted. If they are to be accepted, the solicitation should set forth how such bids are to be treated.
- (f) Bids conditioned upon the award of another contract are not acceptable.

14. Tie bids

- (a) Tie bids are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set for in the invitation to bid.
- (b) The award shall be made to the in-state business if identical favorable bids are received from in-State and out-of-state bidders. However, in order for the USM to achieve its overall minority participation goal, a contract may be awarded as follows:
 - (i) If identical favorable bids are received from an in-state certified minority business enterprise and an in-state non-minority business enterprise, or an out-of-state non-minority business enterprise, the award may be made to the certified minority business enterprise.
 - (ii) If identical favorable bids are received from in state and out-of-state certified minority business enterprises, the award may be made to the certified minority business enterprise having the greatest amount of certified minority business enterprise participation in the particular contract.
 - (iii) If identical favorable bids are received from in-state and out-of-state non-minority business enterprises, the award may be made to the non-minority business enterprise having the greatest amount of minority participation in the contract, including staff or certified minority business enterprise subcontract participation in the contract.
 - (iv) If identical favorable bids are received from in-state bidders or from out-of-state bidders and no rules for implementing a procedure for solving a tie bid apply, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.
- (c) Records shall be made of all invitations for bids on which tie bids are received.

15. Records

When bids have been rejected or canceled before the due date, bids shall be returned to the bidders unopened. When an award has been made copies of

the opened bids and any supporting documentation shall be retained in the procurement file.

16. Multi-Step Sealed Bidding

A “multi-step sealed bid” is a multiple-phase process in which bidders first submit un-priced technical offers or samples, or both, to be evaluated by the Institution and then, those bidders whose technical offers or samples, or both, have been found to be acceptable submit price bids which are then considered. The procedures set forth in Section V.C.12 are to be followed when debriefing unsuccessful proposers.

C. Competitive Sealed Proposals

1. A Request For Proposals (RFP)

This procurement method employs an RFP for the solicitation of Competitive Sealed Proposals which are evaluated on the basis of factors that include but are not limited to price. Evaluation shall be based on the factors set forth in the request for proposals in order to determine which proposal best meets the needs of the Institution.

2. Issuance and Content of Proposals

- (a) The Procurement Officer shall issue a written solicitation containing all information necessary for prospective proposers to prepare a proposal. Identical information shall be furnished to all potential proposers. If indicated in the solicitation, facsimile or electronic proposals may be authorized.
- (b) A copy of the solicitation shall be provided to a reasonable number of potential proposers known to the university and those requesting a copy of the solicitation in order to assure adequate competition.
- (c) The Procurement Officer shall insure that sufficient time is given to potential proposers to prepare responses.
- (d) An RFP shall include:
 - (i) date, time and place for receipt of proposals.
 - (ii) the evaluation factors and an indication of the relative importance of each evaluation factor (including price). Numerical rating systems may be used, but are not required. If used, numerical factors need not be disclosed in the solicitation.
 - (iii) a statement of the services, items or equipment required.
 - (iv) a statement as to how and when price proposals will be submitted (if not received at the same date and time as technical proposals).
 - (v) all mandatory solicitation requirements.

- (vi) all required contract terms and conditions, certifications, and securities.
- (vii) at the discretion of the Procurement Officer, a Maryland Economic Benefit Evaluation Factor may be applied. Its weight relative to the other technical evaluation factors shall be set forth in the RFP. Examples of the Maryland Economic Benefit elements may be provided in the RFP, but other benefits directly or indirectly attributable to the Maryland economy offered in a vendor's proposal may also be considered.
- (viii) a public information act notice which is a mandatory provision for all requests for proposals. The following notice is preferred:

“Proposors should give specific attention to the identification of those portions of the proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, title 10, Subtitle 6, Annotated Code of Maryland.”

- (ix) If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential proposors that are known to have received a copy of the solicitation. All amendments shall include a statement to the effect that proposors are required to acknowledge receipt of any amendments to the request for proposals. If appropriate, the due date shall be adjusted to insure that sufficient time is given to prospective proposors to consider the information contained in the amendment for preparation of their responses.

3. Requirement for Notice

Public notice shall be given in the same manner as provided in for competitive sealed bids in Section V.B.3 above.

4. Pre-Proposal Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-proposal conferences is not mandatory.

5. Receipt of Proposals

- (a) All proposals shall be placed in a secure place until the due date and time. Proposals may not be opened publicly. The Procurement Officer shall ensure that appropriate procedures are in place for the opening of proposals.
- (b) A register of proposals shall be prepared identifying each proposer submitting a proposal. In no event shall the register be disclosed subsequent to the due date of the Financial offers and prior to the award.
- (c) After contract award, proposals shall be open to the public subject to the provisions of the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

6. Mistakes, Errors, and Withdrawal of Proposals

Mistakes, errors and withdrawals of proposal shall be treated in the same manner as provided for in competitive sealed bids in Section V.B.12 above.

7. Late Proposals, Late Modifications, and Late Withdrawals

Late proposals, late modifications and late withdrawals shall be handled in accordance with Section V.B.9 above.

8. Classification of Proposals

- (a) The Procurement Officer may classify proposals as:
 - (i) Reasonably susceptible of being selected for award; or
 - (ii) Not reasonably susceptible of being selected for award.
- (b) Proposors judged by the Procurement Officer as not responsible or proposals not reasonably susceptible of being selected for award, shall be so classified and the proposer/s so notified.

9. Evaluation of Proposals

- (a) Prior to the technical evaluation, the Procurement Officer shall establish the basis for the evaluation.
- (b) During the evaluation of the proposals, information contained in proposals shall not be disclosed to (1) a prospective proposer or (2) anyone outside of the evaluation committee except to those deemed necessary to assist the committee in evaluating the proposals. Any outside evaluator or person providing assistance to the committee shall be advised that the information discussed will be used only for evaluation purposes and shall not be further disclosed.
- (c) Proposals determined to be reasonably susceptible of being selected for award shall be evaluated as set forth in the solicitation.

- (d) Technical and price proposals shall be evaluated independently of each other. Price evaluations may be done at the completion of the technical evaluation or at the same time as the technical evaluation so long as it is done independently and the results not revealed until such time as the technical evaluation is completed.
- (e) Performance (past and present) may be used as an evaluation factor in determining the proposer's ability to perform under the contract. If performance is to be considered, that should be stated in the solicitation. Proposors shall be asked to provide references. In addition, the Institution may use itself as a reference as well as other references that may be known to the university but not provided by the proposer.
- (f) Multiple or alternate proposals, if permitted by the solicitation documents, shall be handled in accordance with Section V.B.13.(e) above.
- (g) At the discretion of the Procurement Officer following the recommendation by the evaluation committee, a short-list of qualified proposals may be established during the technical evaluation. Only those firms short-listed would continue in the evaluation process. Those firms not short-listed shall be so advised. At this point, a second phase of the technical evaluation shall take place. The second phase may include oral presentations with further discussions and refinements with the short-listed firms.
- (h) At the conclusion of the evaluation, the Procurement Officer shall document the following:
 - (i) An analysis of the technical proposals including an assessment of each proposer's ability to meet the technical requirements of the solicitation;
 - (ii) A summary of the findings of the evaluation committee.
- (i) Award shall be made to the responsible proposer whose overall technical and financial proposal was evaluated as best meeting the needs of the University as set forth in the RFP. The University may make multiple awards if it is deemed to be in the best interest of the University, and if provided for in the solicitation

10. Discussions and/or Negotiations

- (a) At the sole discretion of the Procurement Officer, discussions and/or negotiations may be held.
- (b) Proposors shall be treated fairly and equally with respect to any opportunity for discussions, negotiations and clarifications. The Procurement Officer shall establish the procedures and schedule for conducting any discussions.

- (c) Discussions may take place at any point during the evaluation process. To the extent that information revealed during the discussions affects the ranking of proposors during the technical or price evaluation phase, the rankings may be adjusted accordingly.
- (d) If any discussions reveal information that requires a substantive clarification of, or change to the request for proposals, the Procurement Officer shall amend the request for proposals to incorporate the change(s) and a copy of the amendment shall be sent to all proposors still under consideration.
- (e) During discussions, the Procurement Officer shall not disclose or permit to be disclosed any information from a competing proposal or advise a proposer of its standing relative to another proposer.
- (f) The Procurement Officer may allow the proposer a reasonable opportunity to submit any technical, cost, financial, or other information and materials, or revisions to its proposals that may result from the discussions.
- (g) A record of each discussion shall be kept in the procurement file.

11. Best and Final Offers

- (a) When the Procurement Officer determines it is in the best interest of the University, proposors may be permitted to revise their proposals by submitting a best and final offer or series of best and final offers.
- (b) The Procurement Officer shall establish a due date and time for best and final offers.
- (c) A proposer's previous offer shall be deemed final unless a new best and final offer is submitted as requested.

12. Debriefing of Unsuccessful Proposors

- (a) Unsuccessful proposors may request a debriefing. If the proposer chooses to do so, the request must be submitted in writing to the Procurement Officer within ten days after the proposer knew, or should have known its proposal was unsuccessful. Debriefings shall be limited to discussion of the specific proposer's proposal only and shall not include a discussion of a competing offer's proposal. Debriefings shall be conducted at the earliest feasible time.
- (b) The debriefing may include information on areas in which the unsuccessful proposer's proposal was deemed weak or insufficient.
- (c) Debriefing may not include discussion or dissemination of the thoughts, notes or rankings of individual members of an evaluation committee.
- (d) Debriefing may include a summary of the Procurement Officer's rationale for the selection decision and recommended award.

13. Required Solicitation Clauses

In addition to those terms, conditions, and specifications necessary to the particular procurement, a written solicitation for a competitive sealed proposal shall include the current University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document.

14. Award of Competitive Sealed Proposals

Notice of award shall be published in the Maryland Contract Weekly and/or by direct notification to all proposors.

D. Sole Source Procurements

1. Reason for Use of Sole Source

Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude the use of a competitive process. If the Procurement Officer determines that there is only one source that will satisfy the requirements and/or circumstances present, the Procurement Officer may negotiate and award a contract without competition to the sole source.

2. Documentation

- (a) In each instance where the sole source procedures set forth in this policy are used, the Procurement Officer shall make a written determination as to its appropriateness.
- (b) Sole source procurements in the amount of \$100,000 or less may be approved by the Procurement Officer.

3. Continuing Need for Sole Source

The Procurement Officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the Institution. The Procurement Officer shall take action, whenever possible, to avoid the need to continue to procure the same construction, commodities, supplies and/or services without competition.

4. Sole Source Procurement Procedures

- (a) The Procurement Officer may use a letter to request a proposal for a sole source procurement. The letter shall refer to, or attach all terms and conditions of the proposed contract (reference Appendix A).

- (b) The Procurement Officer shall ensure that each sole source contract contains all of the required clauses, representations, terms, conditions and certifications, in accordance with the requirements of these policies and procedures.
- (c) The Procurement Officer has a duty to negotiate the most favorable price and terms and conditions notwithstanding the sole source nature of the procurement.

E. Emergency Procurement

1. Defined

When an emergency condition exists that prevents the use of formal competitive procurement methods in awarding or modifying a contract that is essential to the University, the University may conduct a procurement on an emergency basis. Emergency procurements may be negotiated on a sole source or limited competition basis as dictated by the circumstances surrounding the emergency.

2. Determining Need for an Emergency Procurement

An emergency condition justifies the use of an emergency procurement when that condition threatens one (1) or more of the following:

- (a) The health or safety of any person(s) or animals(s);
- (b) The preservation or protection of property; or
- (c) The continuance of necessary University functions.

3. Limits of an Emergency Procurement

The emergency procurement shall be limited to the procurement of only the types of items and quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

4. Documentation

As soon as practicable, the Procurement Officer shall prepare a written determination that sets forth the justification for the emergency procurement. The determination shall include the following:

- (a) The basis and justification for the emergency procurement including the date the emergency first became known;
- (b) A listing of the items and/or services procured;

- (c) A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification with the appropriate sole source provisions.

5. Procedures for Emergency Procurement

- (a) The Procurement Officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.
- (b) The Procurement Officer shall attempt to solicit offers or proposals from as many potential vendors as practicable under the emergency condition.
- (c) A Procurement Officer may use any acceptable form of bid (e.g., written, fax, electronically transmitted, phone etc.) to solicit proposals for an emergency procurement.

- (d) The Procurement Officer shall ensure that proper records of each emergency procurement are maintained.

F. Unsolicited Proposals

1. Defined

At the recommendation of the Procurement Officer, the University may accept an unsolicited proposal for evaluation if the proposal:

- (a) is innovative and unique;
- (b) was independently originated and developed by the Proposor;
- (c) was prepared without the supervision of the University;
- (d) includes sufficient detail to permit a determination that University support would be worthwhile; and
- (e) shows that the proposal would benefit the University.

2. Documentation

Unsolicited proposals shall contain information to permit consideration in an objective and timely manner, such as;

- (a) The Proposor's name and address and type of organization, such as profit, nonprofit, educational, or certified minority business enterprise;
- (b) The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- (c) The identification of proprietary data to be used only for evaluation purposes;
- (d) The signature of a person authorized to represent and contractually obligate the proposor;
- (e) The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (f) The period of time for which the proposal is valid;
- (g) The type of contract preferred; and
- (h) The proposed duration of the effort.

3. Evaluation of Unsolicited Proposals

When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:

- (a) The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
- (b) The overall scientific, technical, or socio-economic merits of the proposal;
- (c) The potential contribution of the effort to the University's specific mission;
- (d) The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
- (e) The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

4. Return of Unsolicited Proposals

The Institution must reject an unsolicited proposal and it shall be returned to the proposer, citing reasons, when its substance meets any of the following:

- (a) It is available to the Institution without restriction from another source;
- (b) It closely resembles a pending competitive procurement; or
- (c) It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to the Institution on the basis of competitive proposals.
- (d) If the proposal is deemed not in the best interest of the University or is deemed by the University as not of value to the University.
- (e) If the Institution has no requirement for what is proposed and/or the proposal is not affordable.

5. Requirement to Make an Award

A favorable evaluation of an unsolicited proposal does not, by itself, require the University to make an award.

6. Negotiations

The Procurement Officer may negotiate.

G. Procurement by Cooperative Purchasing Agreements

- 1. The University may participate in, conduct, sponsor or administer a cooperative purchasing agreement. The purpose of such agreements is to promote efficiency

and savings that can result from cooperative purchasing. This includes but is not limited to agreements with any of the following:

- (a) The federal government or an agency or other instrumentality of the federal government;
- (b) The State of Maryland, another state, or an agency or other instrumentality of another state;
- (c) A bistate or multistate agency;
- (d) A county, municipal corporation, or other political subdivision of the State or of another state, or an agency or other instrumentality of the political subdivision;
- (e) Other institutions of higher education and the University of Maryland Medical System.
- (f) A cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximize economies of scale when soliciting bids or proposals.
- (g) Alumni associations, foundations, and faculty practice organizations recognized by the Board of Regents.

2. The institution's solicitation must state that the contract may be made available to other agencies for cooperative procurements.

H. Use of Contracts Established by Other Institutions or Agencies

Institutions of the University System of Maryland may use contracts established by other Agencies or Institutions provided that use of the contract is in the best interest of the Institution, and provided that the contract was awarded after a procurement process (including Sole Source or Negotiated Procurement), and provided that the terms of the applicable contract does not prohibit use by the University System of Maryland. Examples of Institutions whose contracts are acceptable for use include, but are not limited to, other States Agencies or Instrumentalities, The Federal Government and its Instrumentalities, The University of Maryland Medical System, Educational and Institution Cooperative (E & I Coop), and the Maryland Hospital Association.

I. Architectural and Engineering Services

1. General

The University System of Maryland is committed to a quality-based selection process in the procurement of architectural and engineering services.

2. Applicability

These A/E policies and procedures are for the procurement and award of contracts, consultant agreements and other obligations for architectural and/or engineering services.

3. Request for Procurement of Services

- (a) The procurement and management of A/E contracts shall be consistent with the delegation of service center procurement and management authority granted to the University of Maryland, Baltimore and the University of Maryland, College Park (herein referred to as “USM Service Center”), as established by the University System of Maryland Board of Regent policy VIII-10.30 - Policy on Authority Concerning Certain Public Improvement Projects.
- (b) An institution of the University System of Maryland (USM) desiring architectural and/or engineering services shall submit to the appropriate USM Service Center the following:
 - (i) A program for the project which sets forth all information necessary to design the proposed improvement;
 - (ii) Certification that the program has been approved by the appropriate State agencies; and
 - (iii) Verification of funding.
- (c) After receipt of the above documents, the USM Service Center shall proceed with the procurement of architectural and/or engineering services.

4. Qualification Committee

The Procurement Officer shall establish a Qualification Committee composed of appropriate representatives from the USM Service Center and the applicable USM client institution.

5. Solicitation

- (a) The USM Service Center shall place announcements in appropriate publications indicating a request to procure architectural and/or engineering services.
- (b) Solicitation Documents: The USM Service Center shall make available a set of solicitation documents to all architectural/engineering firms who request them.
- (c) Procurement Process:
 - (i) Technical Proposal Phase:
 - (a) Initial Phase Technical Proposal:

- (i) Interested architectural and/or engineering firms will be requested to provide an Initial Technical Proposal which will address specified technical criteria such as U.S. Government Standard Forms 254 (Architect-Engineer Related Services Questionnaire) and 255 (Architect-Engineer Related Services Questionnaire for Specific Project), Current Workload, Economic Benefit and Minority Business Enterprise participation.
- (ii) The Qualification Committee will evaluate each architectural/engineering firm's initial technical proposal based on the specified technical criteria.
- (iii) Based upon its evaluation, the Qualification Committee will rank all architectural/engineering firms.
- (iv) As deemed appropriate by the Qualification Committee or as specified in the solicitation documents, one of the following steps will be taken:
 - (a) Based on the ranking, the Qualification Committee will provide a ranking report to the Procurement Officer. Upon approval of this report, the Procurement Officer shall:
 - (i) notify all firms of the ranking and
 - (ii) that only the candidate firm ranked number one, or in the case of a solicitation in which multiple awards are applicable. The appropriate number of highest ranked firms will proceed to the Price Proposal/ Negotiation Phase [Section V.I.5(c)(ii)]; or
 - (b) Based on the ranking, the Qualification Committee will

determine the short-listed firms who will advance to the Second Phase Technical Proposal [Section V.I.5(c)(i)(b)] and the Procurement Officer will notify all proposing firms of the names of all proposers indicating those who have been short-listed.

(b) Second Phase Technical Proposal:

- (i) Short-listed firms will be requested to submit Technical Proposals per the guidelines set forth in the solicitation documents or as requested by the University.
- (ii) The Qualification Committee will evaluate each architectural/ engineering firm's technical proposal based on the specified technical criteria.
- (iii) If deemed appropriate by the Qualification Committee or as specified in the solicitation documents, interviews will be scheduled with the short-listed firms.
- (iv) The Qualification Committee will rank all short-listed architectural/engineering firms based on the technical proposals and interviews, as applicable.
- (v) The Qualification Committee will provide a ranking report of short-listed firms to the Procurement Officer.
- (vi) Upon approval of the Qualification Committee's ranking report, the Procurement Officer shall notify all short listed firms of the ranking and that only the candidate firm ranked number one or, in the case of a solicitation in which multiple awards are applicable, the appropriate number of the highest ranking firms will proceed to the Price Proposal/Negotiation Phase [Section V.I.5(c)(ii)].

(ii) Price Proposal/Negotiation Phase:

- (a) The Procurement Officer shall designate a negotiation committee composed of appropriate representatives from the USM Service Center and the applicable USM client institution (at its determination).

- (b) The candidate firm or firms shall submit a detailed price proposal in accordance with the solicitation documents.
- (c) Negotiations shall be conducted between the candidate firm or firms and the negotiation committee.
- (d) If the negotiation committee is unable to negotiate a satisfactory contract, the committee shall advise the Procurement Officer of such.
- (e) If the Procurement Officer determines that a satisfactory contract cannot be negotiated, the negotiations shall be terminated. In such instances, the USM Service Center shall either commence negotiations with the next ranked candidate firm or firms or re-advertise the procurement as it deems appropriate.
- (f) Upon completion of successful negotiations, the Negotiation Committee will forward its recommendation for contract award to the Procurement Officer.

6. Review of A/E Selection Process

- (a) The Procurement Officer will review the rankings of the short-listed Architectural/Engineering firms and the final fee negotiations with a USM Service Center Executive Group consisting of a public member, a representative/s of the USM client institution, and a minimum of two executive management staff from the Service Center.
- (b) Upon approval of the Executive Group, the Procurement Officer shall proceed to the award phase.

7. Award Phase

- (a) Should the A/E award amount be \$500,000 or less, the Procurement Officer will proceed with awarding the contract to the successful A/E firm or firms.
- (b) Should the A/E award amount exceed \$500,000, the Procurement Officer will forward the contract recommendation on an action agenda for Board of Public Works approval.

SECTION VI. - CONTRACT TYPES

A. General

1. A wide selection of contract types is available to Institutions in order to provide needed flexibility in acquiring the variety and volume of supplies, services and maintenance required by Institutions. Contract types vary according to:

- (a) The degree and timing of the responsibility assumed by the contractor for cost of performance; and
- (b) The amount and nature of profit incentive offered to the contractor for achieving or exceeding specific standards or goals.

2. Contract types are grouped into two broad categories: fixed price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed -price, in which the contractor has full responsibility for the performance cost and resulting profit (or loss), to cost-plus-fixed fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts, in which the contractor's responsibility for performance costs and profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

3. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no contract using Federal funds shall be awarded on a cost plus- percentage of cost basis.

B. Factors in Selecting Contract Types

1. There are many factors that the Procurement Officer should consider in selecting the contract type. They include but are not limited to the following:

- (a) Price competition
Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Institution's best interest.
- (b) Price analysis
Price analyses may provide a basis for selecting the contract type.
- (c) Cost analysis
Uncertainties involved in performance and their impact on costs should be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be selected.
- (d) Urgency of the requirement
If urgency is a primary factor, the Institution may choose to assume a

greater proportion of risk or offer incentives to ensure timely contract performance.

- (e) Period of performance
In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
- (f) Contractor's Capability
Technical capability and financial responsibility of the contractor.
- (g) Adequacy of contractor's accounting system
Except for a firm fixed-price contract, the Procurement Officer should determine that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

SECTION VII - CONTRACT ADMINISTRATION

A. PURPOSE AND SCOPE

With increased privatization and use of term contracts for administrative support within Higher Education, it is important for each institution to develop a methodology for active contract administration. Only through continual active involvement of contract administrators, working in partnerships with Procurement Officers, will the institutions contractual performance goals be achieved.

Contract administration begins with the signing or execution of a contract or purchase order. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the University System of Maryland's purchasing system demands the goods or services are furnished as specified in the contract. Contract administration includes all actions taken by the institution relative to a specific contract after the award is made. A contract administrator is typically identified in each contract.

Pursuant to Chapter 515 of the Laws of 1999, Higher Education-University System of Maryland-Coordination, Governance the University System of Maryland shall comply with Section 11-203(E) of the State Finance and Procurement Article. This section includes provisions of Division II of the State Finance and Procurement Article that apply to the System. These include: Section 11-205 (Fraud in Procurement); Section 11-205.1 (Falsification of Material Facts); Section 13-219 (Required Clauses-Nondiscrimination Clause); Title 14, Subtitles 1 (Preferences to Benefit Disadvantaged Individuals) to the maximum extent possible and 3 (Minority Business Participation); Title 15, Subtitle 1 (Procurement Contract Administration); and Title 16 (Debarment of Contractors).

B. AUTHORITY AND RESPONSIBILITY

1. The Procurement Officer is responsible for the legal, technical and administrative sufficiency of Institution contracts and shall seek legal, technical and other advice within the Institution in fulfilling these responsibilities.
2. Contract administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments and closeout.
3. Contract administration authority is the responsibility of the Procurement Officer, who may delegate it to another University official.

C. APPROVAL OF AWARD ACTIONS

In addition to the authority and delegations provided for herein, the following notifications and approvals apply:

1. Prior notification must be given in writing to the Vice Chancellor for Administration and Finance, University System of Maryland Office for any of the following procurements exceeding \$1 million.
 - (a) Competitive Sealed Bids
 - (b) Competitive Sealed Proposals
 - (c) Unsolicited Proposals
 - (d) Contracts Established by other Institutions or Agencies
 - (e) A/E Services
2. Prior approval must be received from the University System of Maryland Board of Regents (BOR), consistent with current BOR policy and procedures, for any procurement exceeding \$5 million.
3. Prior notification must be given in writing to the Vice Chancellor for Administration and Finance, University System of Maryland Office for any sole source procurement exceeding \$100,000.
4. Any sole source procurement exceeding \$500,000 must receive prior approval of the Vice Chancellor for Administration and Finance, University System of Maryland Office.
5. Prior notification must be given to the Vice Chancellor for Administration and Finance, University System of Maryland Office for sole source personal service contracts in excess of \$25,000.

D. BOARD OF PUBLIC WORKS

Capital improvement and service contracts exceeding \$500,000 and modifications in excess of \$500,000 to such contracts shall be submitted to the Board of Public Works for approval.

E. CONTRACT EXECUTION

1. Only the Procurement Officer, or other duly authorized representative, may enter into a contract on behalf of the Institution.
2. The Procurement Officer, or his/her duly authorized representative, should sign the contract documents after the contract documents have been signed by the contractor.

3. The contract shall be signed by the appropriate representative(s) of the contractor with the authority to bind the firm to the terms of the contract.
4. A contract with a joint venture may involve any combination of individuals, partnerships or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.

F. CONTRACT MODIFICATIONS

1. Only a Procurement Officer is authorized to execute a contract modification on behalf of the Institution.
2. A contract may be modified in accordance with the University System of Maryland Uniformed Contract Terms and Conditions in Appendix A of this document.
3. Contract modifications in excess of \$500,000 to capital improvement and service contracts shall be reported to the Board of Regents through the Vice Chancellor for Administration and Finance.

G. DELIVERY AND PERFORMANCE

The time of delivery or performance is an essential contract element and shall be clearly stated in each contract. Delivery or performance must be met by the date or period specified or the contractor may be considered to be in default.

H. PAYMENT

The contract documents are to include the process by which payments are to be made.

I. CLOSEOUT OF CONTRACTS

Institutions shall adopt internal policies and procedures to ensure that contract closeout is conducted properly.

SECTION VIII – VENDORS

A. Debarment/Suspension

1. The University System of Maryland shall abide by the Code of Maryland Regulations (COMAR) Title 21, Subtitle 08 with regard to all debarments/suspensions.
2. In determining the status of a business or person with regard to debarment/suspension in the State of Maryland, the University System of Maryland shall refer to the Maryland Board of Public Works published list of Businesses & Persons Suspended or Debarred.

B. Vendor Pre-qualifications

The Procurement Officer may limit bids to those vendors pre-qualified after public notice in accordance with Section V.B.3.

C. Vendor Responsibility

1. The Procurement Officer shall make purchases from and award contracts only to responsible contractors.
2. In the absence of information clearly indicating that the prospective contractor is responsible, the Procurement Officer shall make a determination of non-responsibility.
3. Factors to be used in determining whether a vendor is responsible may include, but are not limited to:
 - (a) Financial resources adequate to perform the contract, or the ability to obtain them;
 - (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - (c) A satisfactory performance record;
 - (d) A satisfactory record of integrity and business ethics;
 - (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
 - (f) Compliance with applicable licensing and tax laws and regulation;

- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
 - (h) Other qualifications and eligibility criteria necessary to receive and award under applicable laws and regulations.
- 4. If the Procurement Officer determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the Procurement Officer may determine the prospective contractor to be non-responsible.
- 5. The prospective contractor shall promptly supply information requested by the Procurement Officer regarding the responsibility of the prospective contractor.
- 6. If the prospective contractors fails to supply the information as requested, the Procurement Officer shall make the determination of responsibility or non-responsibility based upon available information.
- 7. The Procurement Officer may use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:
 - (a) The Maryland State Board of Public Works list of Businesses and Persons Suspended or Debarred;
 - (b) Records, past performance, and experience data, including verifiable knowledge of USM and State of Maryland personnel;
 - (c) Being in good standing with the State, including information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.
 - (d) Federal disqualification listing of inelible and debarred contractors.
- 8. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Procurement Officer shall make, sign, and place in the contract file a determination of Non-responsibility, which shall state the basis for the determination and so notify the prospective contractor.

SECTION IX. - SOCIO-ECONOMIC POLICIES

Pursuant to Chapter 515 of the Laws of 1999, the University System of Maryland shall to the maximum extent practicable comply with the provisions of Title 14, Subtitles 1 (Preferences to Benefit Disadvantaged Individuals) and 3 (Minority Business Participation) of the State Finance and Procurement Article of the Annotated Code of Maryland.

In addition, Institutions shall recognize reciprocal certification with other governmental agencies, but would not include these procurements in reporting governed under current State law.

SECTION X - PROTESTS AND CLAIMS

A. General

1. An aggrieved party shall exhaust all administrative remedies provided in this section before seeking judicial review.
2. A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.
3. Under this section, if the last day for taking an action falls on a day when the filing office is closed; the file date will be the next day the filing office is open.

B. Protests

1. Definitions The following words have the meanings indicated:
 - (a) Filed: received by the Procurement Officer, or the Appeals Board depending on the context.
 - (b) Interested party: an actual or prospective bidder, proposer or contractor that may be aggrieved by the solicitation or award of a contract, or by a protest.
 - (c) Protest: a complaint relating to the solicitation or award of a procurement contract.
 - (d) Protestor: means any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest.
 - (e) Appeals Board: means the Maryland State Board of Contract Appeals.
2. Filing a Protest
 - (a) An interested party may file a protest with the appropriate Procurement Officer.
 - (b) The protest shall be in writing and addressed to the Procurement Officer.
3. Timing for Filing
 - (a) A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date and time of receipt of initial proposals.
 - (b) A protest based upon alleged improprieties in a solicitation that did not exist in the original solicitation but which are subsequently incorporated in an amendment to the solicitation

shall be filed not later than the solicitation closing date and time for receipt of bids or proposals identified in the amendment (or in the original solicitation, if the opening date and time were not changed by amendment).

- (c) In cases other than those covered in 3(a) and (b) above, protests shall be filed not later than seven (7) days after the basis for the protest is known or should have been known, whichever is earlier.
- (d) A protest received by the Procurement Officer after the time limits described above may not be considered.
- (e) All costs associated with filing and prosecuting a protest shall be borne by the protestor.

4. Requested Information

- (a) The written protest shall include the following information:
 - (i) The name and address of the protestor;
 - (ii) Appropriate identification of the procurement;
 - (iii) A statement of reasons for the protest; and,
 - (iv) Supporting exhibits, evidence or documents to substantiate the reasons for the protests.
- (b) Any additional information or substantiation requested by the Procurement Officer shall be submitted within five (5) days after receipt of the request by the Protestor. Failure of any party to comply with a request for information or substantiation by the Procurement Officer may result in a resolution of the protest without consideration of any response to the request that is not timely filed.
- (c) Upon written request, the Procurement Officer shall make available to any interested party information submitted that bears on the substance of the protest except when information is confidential, or otherwise is permitted or required to be withheld by law. Persons who wish to keep information submitted by them confidential shall so request specifically identifying the information within documents submitted, and indicating on the front page of each document that it contains information not subject to disclosures. The Procurement Officer will determine whether or not any information may be withheld in accordance with the Maryland Public Information Act.

5. Notification to the Office of the Attorney General

The Procurement Officer shall submit a copy of the protest to the Office of the Attorney General upon receipt of the protest and shall, as appropriate, consult with legal counsel.

6. Negotiations with Interested Parties

The Procurement Officer may conduct discussions and, if appropriate, negotiations with the protester or any other interested party and may resolve the protest by agreement with any one or more interested parties. The agreement shall be in writing and approved by the appropriate institutional authority.

7. Decision by the Procurement Officer

- (a) A decision on a protest shall be made by the Procurement Officer in writing as expeditiously as possible after receiving all relevant, requested information.
- (b) The decision of the Procurement Officer shall be reviewed and approved by the appropriate institutional authority.
- (c) The decision of the Procurement Officer shall include:
 - (i) a description of the controversy and
 - (ii) a statement of the decision, with supporting material.
 - (iii) If the protest is not sustained, a paragraph substantially as follows shall be included in the decision. “This decision is the Procurement Officer’s final action. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with Code of Maryland Regulations 21.10.07.02. If you decide to take such an appeal, you must file written notice of appeal to the Appeals Board within 10 days from the date you receive this decision.” This paragraph shall also include the current address of the Appeals Board.
- (d) The Procurement Officer shall furnish a copy of the decision to the protester and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

8. Appeals

- (a) Protestors are required to seek resolution of their complaints with the Procurement Officer.
- (b) A subsequent appeal by a protestor shall be to the Appeals Board and shall be filed within 10 days of receipt of the Procurement Officer’s decision. All costs associated with filing and prosecuting an appeal shall be borne by the Protestor.
- (c) Protests shall be handled by the Appeals Board in accordance with the Code of Maryland Regulations, Title 21, Subtitle 10 Administrative and Civil Remedies, Chapters 02, 03, 05, and 07 as they may be amended from time to time.

9. Awards of Contracts Pending Protests and Appeals

- (a) If a timely protest has been filed, the contract may be awarded if:
 - (i) a finding is made that execution of the contract without delay is necessary to protect substantial State or University interests or
 - (ii) the Appeals Board makes a final decision concerning the appeal.
- (b) Unless the Board of Public Works has final authority to approve the award, the finding may be made by the Procurement Officer, subject to review by the appropriate University authority. If the Board of Public Works has final approval authority, the Board of Public Works will make the finding.

C. Claims

All claims shall be handled in accordance with Title 15, Subtitle 2 of the State Finance and Procurement Article, Annotated Code of Maryland and the Code of Maryland Regulations, Title 21, Subtitle 10 - Administrative and Civil Remedies, Chapters 04, 05, and 06 as may be amended from time to time.

SECTION XI - DEFINITIONS

ACQUISITION – The obtaining of goods and services through best methods and business practices.

ALTERNATE BID - A dollar amount to be added to or subtracted from the bid for a variation in the item being bid upon. Alternate bids may be either add or deduct alternate bids.

APPEAL - Action taken by a bidder, proposer (actual or prospective) or by a vendor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a procurement decision.

APPEALS BOARD - The Maryland State Board of Contract Appeals.

ARCHITECTURAL SERVICES

1. Architectural services are professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training, and experience.
2. Architectural services include consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, and electrical engineers and other consultants.
3. Architectural services do not include construction inspection services or services provided in connection with an energy performance contract.

AWARD - The transmission by the procurement agency, after all required approvals have been obtained, of the executed contract or written notice of award to the selected vendor.

BEST AND FINAL OFFERS - A procedure conducted that permits qualified offerors to revise their initial proposals when determined by the Procurement Officer to be in the best interest of the University.

BID - A statement of price, terms of sale, and description of the supplies, services, construction, or construction-related services offered by a bidder in response to an invitation for bids under procurement by competitive sealed bidding or comparable simplified procurement procedures.

BID BOARD - A bulletin board in a public place displaying solicitations or announcements of the availability of solicitations.

BID SECURITY - In addition to bid bond, acceptable security includes:

1. a bond in a form satisfactory to the University underwritten by a surety company authorized to do business in the State.
2. a bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
3. a pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
4. an irrevocable letter of credit in a form satisfactory to the Procurement Officer and issued by a financial institution approved by the State Treasurer.

BIDDER - One who submits an offer or bid in response to a solicitation.

BLANKET PURCHASE AGREEMENT (BPA) - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period and specifically identifies these persons authorized to accept goods.

BOARD - The Board of Public Works.

BROKER - A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:

1. Supplies:
 - (a) Does not own, operate, or maintain a place of business in which supplies of the general character required under the contract are kept in stock in the regular course of business,
 - (b) Does not regularly assume physical custody or possession of supplies of comparable character to those offered to the State, or
 - (c) Exclusively acts as a middleman in the provision of supplies offered to the State; or
2. Services: does not regularly maintain the capability, capacity, training, experience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the State, and acquires the services elsewhere, for the benefit of the State.

BUSINESS - Any profit or not for profit corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

CAPITAL IMPROVEMENT - Construction or an architectural service as defined herein.

CHANGE ORDER - A written order signed by the responsible Procurement Officer, directing a contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the contractor.

COLLABORATIVE AGREEMENT - Is a business agreement between the University and another party or parties, the primary purpose of which is other than the acquisition on the part of the University of goods and/or services.

COMMODITY - An item of purchase which may include office goods and materials, food, printing, building materials, and other items needed to support normal operations.

COMPETITIVE BIDDING - Bids or offers by individuals or vendors competing for a contract, privilege, or right to supply specified services or goods.

COMPETITIVE SEALED BID - A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids.

COMPETITIVE SEALED PROPOSALS - The procurement method to be used in those situations when competitive sealed bidding cannot be used because of the inability to prepare specifications that would permit an award based solely on price; or when it is impracticable or disadvantageous to the University.

COMPROLLER - The Comptroller of the Treasury of the State.

CONSTRUCTION -

1. Construction means the process of building, altering, improving, or demolishing any structure, building, or other improvement to real property.
2. Construction **DOES NOT** include the maintenance or routine operation of an existing improvement to real property, or activities related to an energy performance contract.

CONSTRUCTION MANAGEMENT - A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

CONTRACT - An agreement entered into by a procurement agency for the for the acquisition of supplies, services, construction, architectural services, or engineering services.

CONTRACT ADMINISTRATION - The management of all facets of a contract to assure the vendor's total performance is in accordance with the contractual commitments and that the obligations of the vendor under the terms and conditions of the contract are fulfilled.

CONTRACTOR - Any person or business having a contract with the University System of Maryland or an institution thereof.

CONTRACT MODIFICATION- Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, or reinstatements.

COST ANALYSIS - An evaluation of the various cost elements (ie. overhead, labor, materials, profit, transportation, etc) which make-up the total price.

COST-PLUS-FIXED-FEE CONTRACT - A cost-reimbursement type contract that provides for the payment of a fixed fee to the vendor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT- A form of contract which provides for a fee or profit at a specified percentage of the vendor's actual cost of accomplishing the work.

COST-REIMBURSEMENT CONTRACT - A contract under which the University reimburses the contractor for those contract costs, within a stated ceiling, and a fee, if any, which are recognized as allowable and allocable under the cost and price principle regulations.

CURE NOTICE - A notice either oral or in writing that informs the vendor that he or she is in default and states what the vendor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

DAY - A calendar day unless otherwise designated.

DEBARMENT - An action taken by the State to exclude individuals or vendors from contracting with a public body for particular goods or services for specified periods of time.

DEFAULT - Failure of a contractor to comply with the terms and conditions of a contract.

DESIGN-BUILD CONTRACT- A contract between an institution and another party in which the party contracting with the institution agrees to both design and build the structure, roadway or other item specified in the contract. The term includes both sequential design and construction and phased design and construction methodologies.

DETERMINATION - A written procurement decision made by a public official or employee which is based upon written findings.

EMERGENCY - A sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or to mitigate serious damage to public health, safety, or welfare.

ENERGY PERFORMANCE CONTRACT - An agreement for the provision of energy service, including electricity, heating, ventilation, cooling, steam, or hot water, in which a person agrees to design, install, finance through direct vendor financing and not by way of a municipal lease, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings.

ENGINEERING SERVICES -

1. Engineering services are professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment, and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences.
2. Engineering services include consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services.
3. Engineering services do not include:
 - (a) the inspection of construction not requiring engineering training;
 - (b) services provided in connection with an energy performance contract.

EQUIVALENT ITEM - An item of equipment, material or supply, the quality, the design, or performance characteristics of which are functionally equal or superior to an item specified in a solicitation.

EVALUATED BID PRICE - The dollar amount of a bid after bid price adjustments are made under objectively measurable criteria.

EVALUATION OF BIDS - The process of examining a bid after opening to

determine the bidder's responsiveness to requirements, responsibility, and other characteristics of the bid relating to selection for award.

EXTENSION - As applied to contracts for the performance of architect/engineer services, means a change in the scope of the services to be performed by the architect/engineer by including in the contract a requirement for the performance of phases of services not previously included.

FIXED PRICE CONTRACT - A contract which provides for a vendor price under which a vendor bears the full risk for profit or loss.

FUND AVAILABILITY - Monies that are currently credited to the USM or its constituent institutions and are contained within the proper object of expenditure.

INSPECTION - Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

INSTITUTION - A university, college, center, or other component of the University System of Maryland.

INVITATION FOR BIDS - Any documents, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and simplified procurement procedures.

INVOICE - A contractor's written request for payment for supplies, commodities, services, maintenance, construction, construction-related services, architectural services, or engineering services performed or provided.

LATE BID OR PROPOSAL - A bid or proposal which is received at the place designated in the invitation for bids or request for proposals after the deadline established by the solicitation.

LATENT DEFECT - A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specified materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

LEASE - A contract under which the University System of Maryland uses personal property to which it does not have title. Lease does not include lease-purchase or similar financing transactions.

LIQUIDATED DAMAGES - A monetary amount provided for in a solicitation or a contract to be paid by the contractor as damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency and not calculated simply to impose a penalty on the vendor.

MAINTENANCE - Any work necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, including built-in equipment or an in-ground system, that is not included within the definition of construction.

MINOR IRREGULARITY - A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not materially affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured.

MINORITY BUSINESS ENTERPRISE - 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 the interests of the physically or mentally disabled.

MINORITY PERSON - A member of a socially or economically disadvantaged minority group, which for purposes of this title includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

MOST ADVANTAGEOUS - A proposal or offer received from a vendor that is determined to be most beneficial to the institution considering price and evaluation criteria set forth in the solicitation.

MOST FAVORABLE - A bid received from a vendor that is the lowest bid price or lowest evaluated bid price or the bid or evaluated bid that yields the greatest revenue under a revenue-producing procurement contract.

MULTIPLE AWARD - The award of contracts to more than one vendor when the terms and conditions of solicitation so provide.

MULTI-STEP SEALED BID – A multiple phase process in which bidders submit without price technical offers or samples, or both, to be evaluated by the Institution and an independent phase in which those bidders whose technical offers or samples, or both have been found to be acceptable have their price bids considered.

MULTI-YEAR CONTRACT - A contract that requires appropriations for more than 1 fiscal year.

NEGOTIATION - A bargaining process between two or more parties to reach a mutually satisfactory agreement, contract or settlement.

NON-COMPETITIVE NEGOTIATION - The process of arriving at an agreement through discussion and compromise with only one source.

NOTICE OF AWARD - A notification that a contract has been awarded.

NOTICE OF INTENT TO AWARD – A written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

OBJECTIVELY MEASURABLE CRITERIA - Standards, absent matters of opinion or subjective judgment, to compare the economy, effectiveness, or value of the subject of the solicitation and includes reliability, operational costs, maintainability, useful life, and residual value.

OPTION - The unilateral right of the University under a contract to extend the contract for an additional period of time, or to purchase delineated additional goods or labor, or to purchase materials or facilities that have been leased.

ORAL BIDS - Bids which are proposed by a means other than by writing.

PAYMENT BOND - A bond required of a vendor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract. Acceptable forms are those as found under BID SECURITY.

PERFORMANCE BOND - A contract of guarantee executed in a predetermined amount subsequent to award to a contractor to protect the University from loss due to contractor's inability to complete the contract in accordance with its terms and conditions.

Acceptable forms include all those found under "Bid Security" and the grant of a mortgage or deed of trust on real property located within the State of Maryland when:

1. satisfactory to the Procurement Officer;
2. The face amount of the instrument does not exceed 75% of the contractor's equity interest in the property and;
3. the assignment of the mortgage or deed or trust is recorded in the county land records pursuant to real property article, Sec 3-103, Annotated Code of Maryland.

PERFORMANCE SPECIFICATION - Sets forth performance requirements that have been determined essential for the item or service being procured.

PERSON - Any individual, or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

PERSONAL SERVICE CONTRACT – A consulting or other service contract between the University and 1) an individual or 2) a business entity or partnership where the individual performing the work under the contract is the sole or a majority owner.

PREBID OR PREPROPOSAL CONFERENCE – A meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical requirements, specifications, and standards relative to the proposed procurement.

PRE-QUALIFICATION - A procedure to pre-qualify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been pre-qualified.

1. **Qualified Products List (QPL):** A list of products that have been tested and approved based on written pre-qualification procedures.
2. **Qualified Contractors List (QCL):** A list of contractors whose capability to provide a service has been evaluated and approved based on written pre-qualification procedures.

PRICE ANALYSIS - An examination of a vendor's price by comparison to other prices for like goods or services or comparison to other price benchmarks.

PROCUREMENT - All functions that pertain to the process of buying, leasing as lessee, purchasing, or otherwise obtaining any supplies, services, construction, architectural services, engineering services, or services provided under an energy performance contract, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

PROCUREMENT AGENCY - Any principal department or independent unit of the Executive Branch of the State, not otherwise exempted from application of this title, that is authorized by law or regulations to procure.

PROCUREMENT CONTRACT - An agreement in any form entered into by a unit for procurement.

PROCUREMENT OFFICER - Any person authorized by a procurement agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

PROPOSAL - The response to a request for proposals issued by a procurement agency to obtain goods or services.

PROPOSER – A person who submits a response to a request for proposals.

PROTEST - A complaint relating to the solicitation or award of a procurement contract.

PUBLIC BID OPENING - The process of publicly opening and reading bids.

PURCHASE - The act of buying or that which has been bought.

PURCHASE ORDER - A document issued by an Institution authorizing a procurement from a vendor. If issued in acceptance of a bid or proposal, the document is an “acceptance” and forms a contract upon issuance. If issued not in acceptance of a bid or proposal, a contract is formed upon acceptance by the vendor. Acceptance is evidenced by any reasonable manner in light of the circumstances including prompt shipment or prompt promise to ship or a definite expression or written confirmation sent by the vendor within a reasonable time.

QUOTATION - A bid.

REQUEST FOR BIDS - Invitation for bids.

REQUEST FOR PROPOSALS - Any document, whether attached or incorporated by reference, used for soliciting proposals from offerors under any method allowed under this title excluding competitive sealed bidding and comparable small procurement methods.

REQUEST FOR QUOTATION - Invitation for bids.

REQUIREMENTS CONTRACT - A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

RESEARCH GRANT- Funding from an external entity, either governmental or non-governmental, for a specific scope of work to be conducted in accordance within an approved budget and defined period of performance. Funding is made partially (if not entirely) on the qualifications of key personnel, including prospective sub-awardees. The award document is legally binding. A grant as defined here is not a contract for purposes of this document.

RESPONSIBLE - A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance.

RESPONSIVE - A bid submitted in response to an invitation for bids that conforms in all material respects to the requirements contained in the invitation for bids.

SERVICE CONTRACT - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.

SERVICES - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to, the professional, personal, and/or contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, appraisers, land surveyors, and where the service is associated with the provision of expertise or labor, or both.

SMALL BUSINESS - A business, other than a broker, which meets the following criteria:

1. an independently owned and operated;
2. not a subsidiary of another firm;
3. not dominant in its field of operation;
4. its wholesale operations did not employ more than 50 persons, and its gross sales did not exceed \$2,000,000 in its most recently completed fiscal year;
5. its retail operations did not employ more than 25 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year;
6. its manufacturing operations did not employ more than 100 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year;
7. its service operations did not employ more than 100 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year; and
8. its construction operations did not employ more than 50 persons, and its gross sales did not exceed \$4,000,000 in its most recently completed fiscal year.

SOLE SOURCE - When a competitive source selection method cannot be used because a product or service is practicably available only from one source.

SOLICITATION - Invitation for bids, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a procurement agency's procurement needs.

STATE AGENCY –

1. any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundation, fund, department, institute, institution, public corporation, service, trust, university, or other unit of the Executive Branch of the State government and includes any sub-unit within any of these units and
2. **does not** include bi-county, or multi-county, government agencies or political subdivisions of the State, including counties, municipalities, special tax districts, sanitary districts, drainage districts, soil conservation districts, water supply districts, and any entity organized under the general corporation laws of the State.

SUPPLIES - All tangible personal property, including equipment, leases of equipment, insurance, including necessarily associated services, and printing.

SYSTEM - The University System of Maryland.

TECHNICAL PROPOSAL - A proposal, not including price, which sets forth in detail that which a vendor proposes to furnish in response to a request for proposals.

TERMINATION FOR CONVENIENCE - The termination by a Procurement Officer, at his/her discretion, of the performance of work in whole or in part and makes settlement of the vendor's claims in accordance with appropriate policy and procedures.

TERMINATION FOR DEFAULT - Action taken by the Procurement Officer to order a vendor to cease work under the contract, in whole or in part, because of the vendor's failure to perform in accordance with the contract's terms and conditions.

TERMS AND CONDITIONS - Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from laws or administrative procedures.

TIME AND MATERIAL CONTRACT - A contract providing for the procurement of materials at an agreed price or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit).

TREASURER - The Treasurer of the State of Maryland.

UNIVERSITY or UNIVERSITY OF MARYLAND - The University System of Maryland.

UNSEALED BID - An unsealed written offer conveyed by letter, telegraph or other means.

VENDOR - A person or business who desires to enter into a contract with the State.

VOUCHER - A claim for reimbursement of funds resulting from an expenditure related to official State business.

Appendix A

**UNIVERSITY SYSTEM OF MARYLAND
UNIFORM CONTRACT TERMS AND CONDITIONS**

APPENDIX A - TERMS AND CONDITIONS

A. Mandatory Terms and Conditions of Written Solicitations Under \$100,000

Content. The invitation for bids shall include the following:

1. A description of the items requested.
2. Time, date, place and form of response requested.
3. The basis for evaluation and award.
4. The name and telephone number of the procurement officer to whom inquires regarding the solicitation may be directed.

B. Mandatory Terms and Conditions of Written Solicitations Over \$100,000

1. Instructions and information to vendors concerning the solicitation requirements, including the time and date set for receipt of the responses and the address where responses are to be delivered;
2. The purchase description, delivery or performance schedule, and any special instructions necessary.
3. Whether award shall be made on the basis of the most favorable price or the most favorable evaluated price, or best value, whichever is applicable. If the latter basis is used, measurable evaluation criteria to be used shall be set forth in the solicitation.
4. Acknowledgment of Addenda. The solicitation shall require the acknowledgment of the receipt of all changes issued.
5. Public Information Act Notice.
A public information act notice is a mandatory provision for all solicitations. The following notice is preferred:
"Offerors should give specific attention to the identification of those portions of their responses that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the University under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland."
6. Bid/Proposal Security.
 - a. Solicitations for construction contracts reasonably expected by the procurement officer to exceed \$100,000 shall contain notice of bid

- security requirements.
- b. Solicitations for all other contracts reasonably expected by the procurement officer to exceed \$100,000 and for which the procurement officer wishes to require bid security shall contain notice of the bid security requirements.
 - c. Notwithstanding §§A and B of this regulation, notice of bid security is required if a federal law or a condition of federal assistance for the contract requires it.
7. **Minority Business Enterprise Notice.**
A minority business enterprise notification is a mandatory provision for all solicitations as follows:
"Minority business enterprises are encouraged to respond to this solicitation".
8. **Arrearages.**
An arrearages clause is a mandatory provision for all solicitations. The language may be varied but shall contain the following information:
"By submitting a response to this solicitation, a vendor 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."
9. **Bid/Proposal Affidavit.**
Each solicitation shall provide notice that the affidavit prescribed below shall be completed and submitted to the procurement officer.

Bid or Proposal Affidavit

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows:

(indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

- (a) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (b) Been convicted of any criminal violation of a state or federal antitrust statute;

- c) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
- (d) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (e) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;
- (f) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (g) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows:

(indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows:

(list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows:

(you must indicate the reasons why the affirmations cannot be given without qualification):

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or contractor or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland,

which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with the provisions of Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$100,000 or more shall, on or before February 1, of the following year, file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$500 to a candidate for elective office in any primary or general election.

J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by J(2)(b), above;
 - (h) Notify its employees in the statement required by J(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction:
 - (i) Notify the procurement officer within 10 days after receiving notice under J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction:
 - (j) Within 30 days after receiving notice under J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of J(2)(a)--(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in J(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under University Policies and Procedures, Appendix A, Section D. 16. and E. 11.; Default.

- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.04

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

- (1) The business named above is a (domestic ____) (foreign ____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).

- (2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the business, to solicit or secure the Contract, and that the business 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 the Contract.

M. Repealed

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

Firm's Federal Employer Identification Number (FEIN): _____

C. Mandatory Terms and Conditions of University Contracts Under \$100,000

1. Simplified Acquisitions of \$5,000 or less:
 - (a) Contract type-oral or written;
 - (b) Minimum evidence:
 - i. For oral contracts-a receipt, invoice, or voucher;
 - ii. For written contracts-a purchase order or contract;
 - iii. For purchases made with a corporate purchasing card a charge slip or a telephone purchasing card log, and at least a sales slip, packing slip, cash register receipt, or repair order.
2. Simplified Acquisitions exceeding \$5,000:

The contract terms may not be altered or deleted without prior approval of the Procurement Officer or a duly authorized representative.

 - (a) simplified acquisition contracts over \$5,000 must be written, and signed by an authorized University employee.
 - (b) simplified acquisition contracts over \$5,000 must include the following elements:
 - i. Identification of the parties to the contract including contractor taxpayer identification number; the taxpayer identification number shall be the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations;

- ii. A statement of the scope of the contract;
- iii. The dollar value of the contract, if known, or estimated dollar value if the actual value is not known;
- iv. The term of the contract, including completion or delivery date;
- v. Name of the procurement officer responsible for the contract.
- vi. Contract Clauses. In addition to the contract elements specified above, a written simplified acquisition contract may include the other clauses, items, or conditions specified by the institution. It is recommended that simplified acquisition contract include the following:
 1. Maryland Law Prevails. "The laws of Maryland shall govern the interpretation and enforcement of this Contract".
 2. Termination for Convenience: "The University may terminate this Contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the University System of Maryland Procurement Policy and Procedures.
 3. Changes. "This Contract may be amended with the consent of both parties. Amendments may not change significantly the scope of the Contract ."

D. Mandatory Purchase Order Terms and Conditions for Contract exceeding \$100,000

1. General.
The following are mandatory terms and conditions to be included in all purchase orders exceeding \$100,000. If unusual circumstances arise that necessitate the modification of any mandatory terms and conditions, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, if appropriate, by legal counsel.
2. Incorporation by Reference.
"All terms and conditions of the solicitation, and any changes thereto, are made a part of this contract."
3. Tax Exemption.
"The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply."
4. Specifications.

"All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation."

5. Delivery and Acceptance.

"Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met.

The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The University reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

6. Non-Hiring of Employees.

No employee of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or affecting the subject matter of this contract shall, while so employed, become or be an employee of the party or parties hereby contracting with the State or any unit thereof.

7. Nondiscrimination in Employment.

The Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment and to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

8. Financial Disclosure.

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

9. Political Contribution Disclosure.

The Contractor shall comply with Article 33, Sections 30-1 through 30-4, 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, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administration Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

10. Anti-Bribery.

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

11. 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 State Department of Assessments and Taxation, 301 West Preston St., 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 Department of Assessments and Taxation.

12. Contingent Fees.

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

13. EPA Compliance.

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

14. Occupational Safety and Health Act (O.S.H.A.).

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

15. Termination for Convenience.

Upon written notice to the Contractor, the University may terminate this contract, in whole or in part, whenever the University shall determine that such termination is in the best interest of the University. The University shall pay all reasonable costs incurred up to the date of termination and all

reasonable costs associated with termination of the contract. However, the Contractor may not be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

16. Termination for Default.

When the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the University. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

17. Disputes.

This contract shall be subject to USM Procurement Policies and Procedures. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

18. Multi-Year Contracts.

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this contract shall terminate automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

19. Intellectual Property.

Contractor agrees to indemnify and save harmless the University, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this contract.

20. Maryland Law Prevails.

The provisions of this contract shall be governed by the laws of Maryland.

21. Contractor's Invoices.

Contractor agrees to include on the face of all invoices billed to the University, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations. If a Purchase Order document is issued, the Purchase Order Number must be included.

22. Pre-existing Regulations.

The regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

23. Indemnification.

The University shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

24. Conflicting Terms.

Any proposal for terms in addition to or different from those set forth in this purchase order or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

25. Drug and Alcohol Free Workplace.

The contractor warrants that the contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the contractor shall remain in compliance throughout the term of this purchase order.

26. Retention of Records.

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

E. Mandatory Contract Terms and Conditions For Contracts Over \$100,000 Not Documented On a Purchase Order

If unusual circumstances arise that necessitate the modification of any mandatory terms and conditions, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, if appropriate, by legal counsel.

1. Parties to the Contract
2. Scope of the Contract
3. Compensation and Method of Payment
4. Non-Hiring of Employees

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

5. Disputes

Pending Resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

One of the following clauses is preferred:

- a. Alternate Disputes Clause (short form). "This contract shall be subject to the USM Procurement Policies and Procedures. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."
- b. Alternate Disputes Clause (long form).
 - (1) This contract is subject to the USM Procurement Policies and Procedures.
 - (2) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
 - (3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
 - (4) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.
 - (5) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.
 - (6) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
 - (7) The procurement officer shall render a written decision on all claims within 180 days of receipt of the contractor's written

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

- (8) The procurement officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.
- (9) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

6. Maryland Law Prevails. "The laws of Maryland shall govern the interpretation and enforcement of this Contract."

7. Nondiscrimination in Employment.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

8. Contingent Fee Prohibition.

Mandatory provision for all contracts:

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

9. Multi-Year Contracts Contingent Upon Appropriations.

Mandatory provision for all contracts and contract modifications to be effective in more than one fiscal year:

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first."

10. Termination for Default.
Mandatory provision for all contracts. One of the following clauses is preferred:

- a. Alternate Clause -Termination for Default (short form).

"If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies And Procedures."

- b. Alternate Clause -Termination for Default (long form).

(1) The University may, subject to the provisions of paragraph (3) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof-, or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does

not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

- (2) In the event the University terminates this contract in whole or in part as provided in paragraph (1) of this clause, the University may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the University for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- (3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.
- (4) If, after notice of termination of this contract under the 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 this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a

question of fact within the meaning of the clause of this contract entitled "Disputes."

- (5) If this contract is terminated as provided in paragraph (1) of this clause, the University, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the University has an interest. Payment for completed supplies delivered to and accepted by the University shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the University and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The University may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.
- (6) The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier."

11. Termination for Convenience.

Except as provided in §B, mandatory provision for all contracts. One of the following clauses is preferred:

- a. Alternate Clause -Termination for Convenience (short form).
"The performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all

reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.

b. Alternate Clause -Termination for Convenience (long form).

- (1) The performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.
- (2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:
 - (a) stop work as specified in the Notice of Termination;
 - (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
 - (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (d) assign to the University, in the manner, at times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
 - (f) transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the procurement officer,
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other

- material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
- (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University;
- (g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor
- (i) may not be required to extend credit to any purchaser, and
 - (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;
- (h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (i) take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the University has or may acquire an interest. The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the University to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the University shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by

the procurement officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

- (3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (4) Subject to the provisions of paragraph (3), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

- (5) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):
- (a) for completed supplies or services accepted by the University (or sold or acquired as provided in paragraph (2) (g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;
 - (b) the total of-
 - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;
 - (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2) (e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (2) (g) above); and
 - (iii) a sum, as profit on (i) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
 - (c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the

contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5) (a) and (b) (i) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a buyer pursuant to paragraph (2) (g).

- (6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with USM Procurement Policies and Procedures as in effect on the date of this contract.
- (7) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the procurement officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the University shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.
- (8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the University may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the

provisions of this clause, and not otherwise recovered by or credited to the University.

- (9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.
- (10) The University may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.
- (11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall-from the effective date of termination until the expiration of three years after final settlement under this contract -preserve and make available to the University at , all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof."

12. Delays and Extensions of Time.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"Delays and Extensions of Time"

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

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

13. Modifications.

This Contract may be amended with the consent of both parties. Amendments may not change significantly the scope of the Contract.

14. Liquidated Damages.

Mandatory provision for those contracts deemed appropriate by the procurement officer.

15. Variations in Estimated Quantities.

Mandatory provision for all contracts that contain estimated quantity items.

16. Suspension of Work.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

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

17. Pre-existing Regulations.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract."

18. Payment of State Obligations.

Mandatory provision for all contracts. The following clause is preferred:

"Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the

Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited."

19. Financial Disclosure.

Mandatory provision for all contracts:

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

20. Political Contribution Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

- a. before a purchase or execution of a lease or contract by the University, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
- b. if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6-month period ending July 31.

21. Retention of Records.

Mandatory provision for all contracts. The following clause is preferred:

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

22. Compliance with Laws.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- c. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract."

23. Cost and Price Certification.

Mandatory provision for all contracts and contract modifications (excluding real property leases and architectural services or engineering services contracts (see 24. below "Truth in Negotiations") if the contract or modification exceeds \$100,000 or a smaller amount determined by the procurement officer under State Finance and Procurement Article, §13-220. The language shall be in substantially the same form as follows:

"Cost and Price Certification"

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

- a. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
- b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.
- c. The price under this Contract and any change order or modification hereunder, including profit or, fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current."

24. Truth-In-Negotiation Certification.

Mandatory provision for architectural services or engineering services contracts exceeding \$100,000. It shall be in substantially the same form as follows:

"Truth- In -Negotiation Certification"

"The Contractor by submitting cost or price information, including wage rates or other actual unit costs, certifies to the best of its knowledge, information and belief, that:

- a. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;
- b. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The University's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and
- c. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs."

25. Contract Affidavit.
Mandatory contract addendum. The contract addendum shall be in substantially the same form as follows:

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT

I am the _____ (title) and the duly authorized representative of (business) _____ and that I possess the legal authority to make this affidavit on be of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT-

- (1) The business named above is a (domestic) (foreign) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:
Name: Address:
- (2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposal Affidavit dated , _ / _ / _ , and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

F. Mandatory Construction Contract Clauses

1. Application.

- a. In addition to the clauses required by this chapter, each construction contract shall include the clauses required by USM Procurement Policies and Procedures.
- b. If unusual circumstances arise that necessitate the modification of any mandatory terms and conditions, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, if appropriate, by legal counsel.

2. Changes.

Mandatory provision for all construction contracts:

- “(1) The procurement officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:
 - (a) In the specifications (including drawings and designs);
 - (b) In the method or manner of performance of the work;
 - (c) In the State-furnished facilities, equipment, materials, services, or site; or
 - (d) Directing acceleration in the performance of the work.
- (2) Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

- (3) Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- (4) Subject to paragraph 6 (F), below, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under B, above, shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.
- (5) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (1) above, or the furnishing of written notice under (2), above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the University. The statement of claim hereunder may be included in the notice under (2), above.
- (6) Each contract modification or change order that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.
- (7) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.”

3. Variations in Estimated Quantities.

Mandatory provision for only those construction contracts that contain estimated quantity items:

Variations in Estimated Quantities

"Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or

decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify."

4. Suspension of Work.

Mandatory provision for all construction contracts:

Suspension of Work

"(1) The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the University.

(2) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is excluded under any provision of this contract.

(3) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the contract."

5. Differing Site Conditions.

Mandatory provision for all construction contracts:

Differing Site Conditions

"(1) The Contractor shall promptly, and before such conditions are disturbed, notify the procurement officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the

site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The procurement officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- (2) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (1) above; provided, however, the time prescribed therefor may be extended by the University.
- (3) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract."

6. Disputes.

Mandatory provision for all construction contracts:

- A. This contract is subject to the USM Procurement Policies and Procedures
- B. Except as otherwise provided in this contract or by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, claim means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
- D. Within 30 days after contractor knows or should have known of the basis for a claim relating to this contract, contractor shall file a written notice of claim with the procurement officer.
- E. Contemporaneously with, or within 30 days after, the filing of a notice of claim, contractor shall submit the written claim to the procurement officer. If contractor so requests, the procurement officer, on conditions the procurement officer deems satisfactory to the unit, may extend the time in which contractor must submit the claim. An example of when a procurement officer may grant an extension includes situations in which the procurement officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.
- F. The claim shall set forth all the facts surrounding the controversy. Contractor, at the discretion of the procurement officer, may be

afforded an opportunity to be heard and to offer evidence in support of the claim.

- G. The procurement officer shall mail or deliver written notification of the final decision within:
 - (1) 90 days after the procurement officer receives the claim if the claim is an amount for which the Appeals Board accelerated procedure, set forth in COMAR 21.10.06.12, may be used;
 - (2) 180 days after the procurement officer receives the claim for a claim not covered under §G(1) of this regulation; or
 - (3) A longer period that the procurement officer and contractor agree to in writing.
- H. The final decision may award a contract claim only for those expenses incurred not more than 30 days before contractor was initially required to have filed the notice of claim.
- I. The procurement officer's decision is the final action of the University. If the procurement officer fails to render a final decision within the time required, contractor may deem the failure to be a final decision not to pay the claim.
- J. If the final decision grants the claim in part and denies the claim in part, the University shall pay contractor the undisputed amount. Payment of the partial claim is not an admission of liability by the University and does not preclude the University from recovering the amount paid if a subsequent determination modifies the final decision.
- K. Contractor may file a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of notice of the decision.
- L. Pending resolution of a claim, contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.”

7. Site Investigation.

Mandatory provision for all construction contracts:

Site Investigation

"The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of

successfully performing the work. The University assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the University."

8. Default, Delay and Time Extensions.

Mandatory provision for all construction contracts:

Termination for Default-Damages for Delay-Time Extensions

- “(1) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the University may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event the University may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the University resulting from his refusal or failure to complete the work within the specified time.
- (2) If fixed and agreed liquidated damages are provided in the contract and if the University so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the University in completing the work.
- (3) If fixed and agreed liquidated damages are provided in the contract and if the University does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- (4) The Contractor's right to proceed may not be so terminated nor the contractor charged with resulting damages if:
- (a) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (b) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the procurement officer in writing of the

causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

- (5) If, after notice of termination of the Contractor's right to proceed under the 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 delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".
- (6) The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- (7) As used in paragraph (4) (a) of this clause, the term subcontractors or suppliers means subcontractors or suppliers at any tier."

9. Liquidated Damages.

Mandatory provision for all construction contracts unless the University head determines that the exclusion of the clause is in the best interest of the University:

"Liquidated Damages"

"Time is an essential element of the contract and it is important that the work be vigorously prosecuted until completion."

"For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders."

10. Termination for Convenience.

Mandatory provision for all construction contracts:

Termination for Convenience of the University

"(1) The- performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the procurement officer shall determine that such termination is in the best interest of the University. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of

work under the contract is terminated, and the date upon which such termination becomes effective.

- (2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:
 - (a) Stop work under the contract on the date and to the extent specified in the Notice of Termination;
 - (b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
 - (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by Notice of Termination;
 - (d) Assign to the University in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (e) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
 - (f) Transfer title and deliver to the University, in the manner, at the times and to the extent, if any, directed by the procurement officer,
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
 - (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University;
 - (g) Use his best effort to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor
 - (i) shall not be required to extend credit to any purchaser, and
 - (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this contract or

shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;

- (h) Complete performance of such part of the work as may not have been terminated by the Notice of Termination; and
 - (i) Take such action as may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the University has or may acquire an interest. The Contractor may submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the University to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the University shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- (3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (4) Subject to the provisions of paragraph (3), the contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which

amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this paragraph.

(5) In the event of the failure of the Contractor and the procurement officer to agree, as provided in paragraph (4), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4).

(a) With respect to all contract work performed before the effective date of the Notice of Termination, the total (without duplication of any items) of:

(i) The cost of the work;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (2)(e) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (i) above; and

(iii) A sum, as profit on (i) above, determined by the procurement officer, to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(b) The reasonable cost of the preservation and protection of property, incurred pursuant to paragraph (2) (i); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the

determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (a) above, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (a) above, the fair value, as determined by the procurement officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the University, or to a buyer pursuant to paragraph (2) (g).

- (6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5), and (9) hereof shall be in accordance with the USM Procurement Policies and Procedures as in effect on the date of this contract.
- (7) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the procurement officer under paragraph (2), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the University shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.
- (8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the University may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the University.
- (9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within

ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

- (10) The University may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University upon demand, together with interest computed at the legal rate for the period from the date such excess payment is received by the contractor to the date on which the excess is repaid to the University; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.
- (11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents and other evidence bearing on the costs and expenses of the contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, photographs, microphotographs, or other authentic reproductions thereof."

11. Performance and Payment Bonds

Mandatory provision for all construction contracts exceeding \$100,000:

- A. Performance Bond. The required performance Bond shall be in the form specified in Section G.1 of these Uniform Contract Terms and Conditions.
- B. Payment Bond. The required payment bond shall be in the form specified in Section G.2 of these Uniform Contract Terms and Conditions.

G. Bonds

A bid bond, performance bond, or a payment bond may be required in a solicitation. A bid bond, when specified, must accompany the bid. Performance bonds and payment bonds, if requested, must be filed in accordance with the direction of the Procurement Officer.

A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If approved by the Attorney General, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security offered affords protection to the institution equivalent to a corporate surety bond.

If a performance bond requirement is not stated in the solicitation and the institution later determines that a bond should be provided prior to the award of a contract, the contractor to whom the award will be made shall provide a performance bond, and the institution will pay the cost of the bond.

If unusual circumstances arise that necessitate the modification of the form and/or wording of the Bond, a recommendation containing the necessary modification(s) and including written justification must be approved by the Procurement Officer and, if appropriate, by legal counsel.

1. Performance Bond.
Mandatory provision for all construction contracts exceeding \$100,000: The required performance bond shall be in the form specified as follows:

PERFORMANCE BOND

Principal	Business Address of Principal
Surety	Obligee
a corporation of the State of and authorized to do business in the State of Maryland	STATE OF MARYLAND By and through the following Administration
Penal Sum of Bond (express in words and figures)	Date of Contract

Description of Contract	Date Bond Executed

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for

the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications. This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the

name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:
Witness

Individual Principal

_____ as to

_____ (SEAL)

In Presence of:
Witness

Co-Partnership Principal

_____ as to

_____ (SEAL)
(Name of Co-Partnership)

_____ as to

By: _____ SEAL)

_____ as to

_____ (SEAL)

_____ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

_____ as to
Corporate Secretary

By: _____ AFFIX
CORPORATE SEAL
President

(Surety)

Attest:

(SEAL) By: _____ CORPORATE

AFFIX

SEAL

Title _____

Signature

Bonding Agent's Name: _____
(Business Address of Surety)

Agent's Address _____

Approved as to legal form and sufficiency
this ____ day of ____

Asst. Attorney General

2. Payment Bond.

The required payment bond shall be in the form specified as follows:

PAYMENT BOND

Principal Business Address of Principal

Surety Obligee
STATE OF MARYLAND

a corporation of the State of
and authorized to do business in the State
of Maryland By and through the following
Administration

Penal Sum of Bond (express in words and figures) Date of Contract

Description of Contract Date Bond Executed

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business addresses as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly

and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 9-113 of the Real Property Article of the Annotated Code of Maryland, as from time to time amended.
2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full may, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then

each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: Individual Principal

In Presence of:
Witness

Individual Principal

_____ as to

_____ (SEAL)

In Presence of:
Witness

Co-Partnership Principal

_____ as to

_____ (SEAL)
(Name of Co-Partnership)

_____ as to

By: _____ (SEAL)

_____ as to

_____ (SEAL)

_____ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

_____ as to
Corporate Secretary

By: _____ CORPORATE
President AFFIX
SEAL

(Surety)

Attest:

(SEAL) By: _____ CORPORATE
SEAL

Signature

Title _____

Bonding Agent's Name: _____

(Business Address of Surety)

Agent's Address _____

Approved as to legal form and sufficiency
this ____ day of _____

Asst. Attorney General

3. Bid Bond

- a. Solicitations for construction contracts reasonably expected by the procurement officer to exceed \$100,000 shall contain the following notice of bid security requirements (See COMAR 21.06.07).
- b. Solicitations for all other contracts reasonably expected by the procurement officer to exceed \$50,000 and for which the procurement officer determines a bid security shall be required, shall also contain the following notice of bid security requirements.
- c. Notwithstanding §§A and B of this regulation, notice of bid security is required if a federal law or a condition of federal assistance for the contract requires it.
- c. The bid bond shall be in the following form:

UNIVERSITY SYSTEM OF MARYLAND

BID BOND

Bid No.

Bond

No.

KNOW ALL MEN BY THESE PRESENTS:

that we, _____ as

Principal, hereinafter called the Principal, and
_____ a corporation duly organized under the laws of

the State of _____, as Surety, hereinafter called the Surety, are held and firmly bound unto the State of Maryland, hereinafter called

"State", for the sum of _____, for the payment of which sum, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for:

NOW, THEREFORE, if the Principal, upon acceptance by the State of its bid identified above, within the period specified herein for acceptance one hundred and twenty (120) days, if no period is specified, shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified ten (10) days if no period is specified after receipt of the forms, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the State for any cost of procuring the work which exceeds the amount of its bid, then the above obligation shall be void and of no effect.

The Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the State, notice of which extension(s) to the Surety being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than one hundred and twenty (120) calendar days in addition to the period originally allowed for acceptance of the bid.

In Presence of: Individual Principal
 Witness

_____ as to
 (SEAL)

In Presence of: Co-Partnership Principal
 Witness _____ (SEAL)
(Name of Co-Partnership)

_____ as to BY: _____ (SEAL)

_____ as to BY: _____ (SEAL)

 Corporate Principal

Attest: _____ (Name of Corporation)

_____ as to B Y: _____ CORPORATE

Corporate Secretary President SEAL

 (Surety)

Attest: (SEAL) By: _____ AFFIX CORPORATE SEAL

 Signature Title _____

(Printed or Typed Name)

(Printed or Typed Name)

Bonding Agent's Name:

(Business Address of Surety)

Agent's Address:

(Telephone Number)

Telephone Number:

H. Insurance

The following terms are suggested for use in contracts where purchase of insurance by the contractor is required by law, regulation, or the procurement officers judgment. The terms and amounts of the clause may be changed at the procurement officer's discretion.

1. The Contractor shall defend, indemnify and save harmless the University System of Maryland, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the performance by the Contractor, employees or agents, of the work covered by this Contract.
2. The Contractor shall secure, pay the premiums for, and keep in force until the expirations of this Contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this Contract.
 - a. Commercial General Liability Insurance including all extensions-
 - \$2,000,000 each occurrence;
 - \$2,000,000 personal injury;
 - \$2,000,000 products/completed operations;
 - \$2,000,000 general aggregated
 - b. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
 - c. Owner's Landlord's and Tenant's and Contractor's bodily injury liability insurance, with limits of not less than \$500,000 for each person and \$2,000,000 for each accident.
 - d. Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.
 - e. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.
 - f. Food products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

3. All policies for liability protection, bodily injury or property damage must specifically name or its face, the University System of Maryland as an additionally named insured as respects to operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items 2a-2f above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.
4. Each insurance policy shall contain the following endorsements: "It is understood and agreed that the Insurance Company shall notify in writing Procurement Officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished to the Procurement Officer. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of Contract award, the requested Certificates and Policies shall be delivered as directed by the Procurement Officer. Notices of policy changes shall be furnished to the Procurement Officer."
5. All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

I. Review of Contracts for Legal Form and Sufficiency

- A. Contracts documented on a purchase order form, which includes the standard terms and conditions of Appendix A, Section D of these Procurement Policies and Procedures, and does not include any terms which conflict with the standard purchase order terms, does not require further review for legal form and sufficiency.
- B. Documents submitted by a contract party other than the University, which that party seeks to have included as part of the contract between the parties must be reviewed for content and legal form and sufficiency. Review of contract documents should ensure that the content is consistent with the scope of the contract, and does not modify the terms of the agreement. Any change to the contract shall be made only by a formal contract modification referencing the applicable terms of the contract. Modification of documents submitted by a party other than the Institution may be made by the Procurement Officer and, if appropriate, by legal counsel.