

# THE UNIVERSITY SYSTEM OF MARYLAND PROCUREMENT POLICIES AND PROCEDURES



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# **UNIVERSITY SYSTEM OF MARYLAND PROCUREMENT POLICIES AND PROCEDURES**

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

Originally Reviewed by Joint Committee on Administrative, Executive, and Legislative  
Review of the Maryland General Assembly on January 24, 2000

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

Revised and Approved by the University System of Maryland  
Board of Regents on February 12, 2016

Revised and Reviewed by the Joint Committee on Administrative, Executive and Legislative  
Review of the Maryland General Assembly on June 17, 2016

# **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 Education Article § 12-112(a), Md. Code Ann., 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 (“USM”) 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.

Pursuant to Board of Regents Policy Section I. I-7.01 II C: “In establishing the USM as a public corporation, the General Assembly conferred upon the Board the powers of a Maryland Corporation, as well as other statutory powers, which can be limited only by statutes that impose restrictions specifically on the USM.”

Unless related to statutory provisions applicable to the USM, Board of Public Works Advisories and Executive Orders do not apply to the USM unless recommended by the USM Procurement Directors and the USM Director of Procurement and approved by the USM Vice Presidents for Administration in consultation with legal counsel.

## **SECTION IV. - APPLICABILITY**

### **A. General Applicability**

1. These Policies and Procedures apply to contracts by the USM and its constituent institutions for the acquisition, rental, purchase or lease of Commodities, Supplies, Services, Information Technology, Maintenance, Capital Improvements, Construction, and Architectural and Engineering services. As used herein, a constituent university may be referred to as the “University” or the “Institution.”
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 Real Property or 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, student health insurance, etc.).
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 and/or service contracts for conferences hosted or attended by the University and the operation of University 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, delivery, transmission, use, or development of curricular inclusive of course and library materials, in any format, equipment, and related services.
15. Contracts for procurements related to corporate sponsored research.
16. Revenue generating contracts such as, but not limited to, pouring rights, bookstore, vending, dining and lodging services, and the like.
17. High Impact Economic Development Activities certified by the Board of Regents under Policy VIII-15.0.



## **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 \$200,000. Institutions may establish and implement their own Simplified Acquisition policies and procedures for purchases under \$200,000. An Institution may establish its own Simplified Procurement threshold based on its own requirements, but that limit may not exceed \$200,000. 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 \$25,000, competition is preferred, but is not required.

#### **4. Competitive Simplified Procurements**

For orders between \$25,000 and \$200,000 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 issued in a manner that best meets the needs of the procurement. Examples include, but are not limited to the following:
- (i) Direct solicitation to known suppliers, Minority Business Enterprises, Small Businesses, and/or trade associates, and/or
  - (ii) Publication in one or more of the following available resources:
    - (a) Bid Board
    - (b) eMaryland Marketplace (or the current State of Maryland solicitation publishing application)
    - (c) Trade Journals
    - (d) Business Journals
    - (e) Internet

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” (IFB), 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 an IFB 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) eMaryland Marketplace\* (or the current State of Maryland solicitation publishing application)
- (c) Trade Journals
- (d) Business Journals
- (e) Internet
- (f) Direct solicitation to known firms, Minority Business Enterprises, Small Businesses, and trade associations.

\* All invitations for bids shall be published in the eMaryland Marketplace (or the current State of Maryland solicitation publishing application) 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 publish the amendment or addendum in accordance with V.B.3 above, and in addition may send a copy of the amendments/addenda to all potential bidders that are known to have received a copy of the solicitation. All amendments/addenda shall include a statement to the effect that bidders are required to acknowledge receipt of any amendments to the request for bids; this acknowledgement may be in the form of a “receipt of delivery or read” based on an email, an email sent to the Procurement Officer by the bidder, a conversation with the Procurement Officer that is documented in writing or other means that the Procurement Officer finds confirms a bidder’s receipt of an amendment/addendum. 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, time and in the manner specified in the solicitation. Acceptance of bids in any form other than written and signed documents, must be expressly permitted 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 modification of 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 evidentiary 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 a 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 Responsible bidder offering the most favorable Responsive price that satisfies 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 (“MBE”) 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 MBE.
  - (ii) If the solicitation established an MBE subcontracting goal in the resulting contract and if identical favorable bids are received from in state and out-of-state certified MBE s, the award may be made to the certified MBE having the greatest amount of certified MBE participation in the particular contract. For solicitations where there is no MBE subcontracting goal, then the award may go to the in-state certified MBE.

- (iii) If the solicitation established an MBE goal in the successful contract and 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 MBE participation in the contract, including staff or certified MBE 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 bidders.

17. Negotiated Award: In the event the Procurement Officer finds that there is unsatisfactory competitive sealed bidding, a negotiated award may be made in accordance with Section V, D herein.



## 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).
  - (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: “Proposers 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 pursuant to the Public Information Act (the “PIA”), codified in General Provisions Article (“GP”), Title 4 of the Md. Code Ann.”
  - (ix) If any amendments or addenda are required, the Procurement Officer shall comply with Section V.B.7 above.

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 proposers at pre-proposal conferences is not mandatory.

5. Receipt of Proposals

- (a) All proposals shall be secured 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. The register shall not be disclosed prior to the award.
- (c) After contract award, proposals shall be open to the public subject to the provisions of the PIA.

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) Proposers 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 based on the criteria outlined in the solicitation.
- (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. Proposers 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) The procurement process may consist of multiple phases. At each phase of the procurement and 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. At the conclusion of each phase, those firms not short-listed shall be so advised. The technical evaluation phases may include, but are not limited to, oral presentations and site visits 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.
  - (iii) 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) The University will select for negotiations those proposers deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors set forth in the RFP, including, but not limited to, price; provided, however, that should the University determine in its sole discretion that only one proposer is fully qualified, or that one proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that proposer. The Procurement Officer will advise all proposers of the University's determination and document the basis for determination to be retained in the procurement file. Negotiations shall be conducted with the proposer(s) selected. Price will be considered in determining the awardee, but price will not be the sole determining factor.
- (c) Proposers 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.
- (d) Discussions may take place at any point during the evaluation process. To the extent that information revealed during the discussions affects the ranking of proposers during the technical or price evaluation phase, the rankings may be adjusted accordingly.
- (e) 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 proposers still under consideration.
- (f) 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.
- (g) 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.
- (h) 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, proposers 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 Proposers

- (a) Unsuccessful proposers 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. The matters discussed at the debriefing may not be reduced to writing.
- (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 one or more of the following ways: a) eMaryland Marketplace (or the current State of Maryland publishing application), and/or, b) by posting on the Institution's bid board, and/or, c) by direct notification to all proposers.

## **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) Refer to Section VII.C.3 for notification to USM requirements.
- (c) Sole source procurements in the amount of \$500,000 or less may be approved by the Procurement Officer.
- (d) Refer to Section VII.C.4 for approval requirements for sole source procurements exceeding \$500,000.

### 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 contract 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 competition to the extent practicable 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 Proposer;
- (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 Proposer's name and address and type of organization, such as profit, nonprofit, educational, or certified minority business enterprise;
- (b) The names, telephone numbers, and email addresses 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 proposer;
- (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 Bi-state entities 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 Organizations, Institutions or Agencies**

Institutions of the University System of Maryland may use contracts established by other Organizations, 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 Organizations, Institutions, or Agencies 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, other higher education institutions, US Communities, Educational and Institution Cooperative (E & I Coop), Internet 2, Maryland Educational Enterprise Consortium (MEEC), the Maryland Hospital Association and entities certified by the Board of Regents as High Impact Economic Development Activities.

**I. Qualification Based Selection Process (QBS) for non-architectural/engineering contracts:**

1. Defined

This procurement method employs a solicitation of Proposals which are evaluated and ranked on the basis of technical qualifications factors followed by fee negotiations with the top ranked proposer(s). Evaluation shall be based on the factors set forth in the solicitation in order to determine which proposal best meets the needs of the Institution.

2. Applicability

The Procurement Officer may determine that a qualification based selection process would be the most advantageous selection method to satisfy the requirements and/or circumstances present. Generally, this method is most applicable to professional service providers, however, QS does not need to be limited solely to such.

3. Qualification Committee

The Procurement Officer shall establish a Qualification Committee composed of representatives from the Institution(s) (“Qualifications Committee”).

4. Solicitation

- (a) Method of advertisement shall comply with Section V.B.3 herein.
- (b) Solicitation Documents: The Procurement Officer shall make available a set of solicitation documents to any firm requesting them. Procurement Process:
  - (i) Initial Technical Proposal Phase: Interested firms will be requested to provide a Technical Qualifications Proposal (“Initial Technical Proposal”) which will address technical criteria a specified in the solicitation documents.
  - (ii) The Qualification Committee will evaluate each firm’s Initial Technical Proposal based on the specified technical criteria.
  - (iii) Based upon its evaluation, the Qualification Committee may establish a shortlist of qualified firms to continue in the procurement process or may rank the firms.
  - (iv) Subject to the terms of the solicitation, the Qualification Committee will continue as follows:
    - (a) If firms are ranked: Based on the evaluation, the Qualification Committee will provide a ranking report to the Procurement Officer. Upon approval of this report by the Procurement Officer, the Procurement Officer shall:
      - (i) notify all firms of the ranking, and

- (ii) that only the proposer 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.4(vi)); or,
- (b) Based on the evaluation, the Qualification Committee provides a report to the Procurement Officer recommending a shortlist of firms it determined qualified for continuation in the procurement process. Upon approval of this recommendation by the Procurement Officer, the Procurement Officer will notify all proposing firms of the names of all indicating those that have been shortlisted.
- (v) Subsequent Technical Proposal Phases:
  - (a) Short-listed firms may be requested to submit a more detailed Technical Proposal, to attend an interview/oral discussion session and/or to conduct site visits per the guidelines set forth in the solicitation documents or as requested by the Institution.
  - (b) The Qualification Committee will evaluate each Technical Proposal based on the specified technical criteria.
  - (c) If deemed necessary by the Qualification Committee or specified in the solicitation documents, multiple iterations of V.I.4 (c) may occur.
  - (d) Further shortlists may be established at each phase of the procurement.
  - (e) At the conclusion of the technical evaluation, the Qualification Committee will rank all final short-listed firms based on the Technical Proposals, interviews, and site visits as applicable.
  - (f) The Qualification Committee will provide a ranking report of the final short-listed firms to the Procurement Officer.
  - (g) Upon the Procurement Officer's approval of the Qualifications Committee's ranking report, the Procurement Officer shall notify all short-listed firms of the final ranking and of the proposer(s) who will proceed to the Price Proposal/Negotiation Phase [Section VI.4.(vi)]. The Procurement Officer may determine that it is in the best interest of the Institution to have more than one firm proceed to the Price Proposal/Negotiation Phase.

(vi) Price Proposal/Negotiation Phase:

- (a) The Procurement Officer shall designate a negotiation committee composed of representatives from the Institution(s) (the “Negotiation Committee”).
- (b) The proposer(s) shall submit a detailed price proposal in accordance with the solicitation documents.
- (c) Negotiations shall be conducted between the proposer(s) and the Negotiation Committee.
- (d) If the Negotiation Committee is unable to negotiate a satisfactory contract with one or more of the firms, the Negotiation Committee shall advise the Procurement Officer of such.
- (e) If the Procurement Officer determines that a satisfactory contract cannot be negotiated with one or more firms, as applicable, the negotiations shall be terminated with that firm. In such instances, the Institution shall either (i) continue negotiating with the other firm(s) who progressed to the price proposal/negotiations phase; or (ii) if only one firm had progressed to the price proposal/negotiations phase, proceed with the next ranked candidate firm or firms; or (iii) 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.

5. Review of QBS Selection Process

Upon review of the results of the price negotiations, the Procurement Officer may (i) proceed to the award to the recommended firm(s), (ii) continue negotiating with one or more firm, or (iii) re-advertise the procurement.

6. Award under a QBS Selection Process

Notice of award shall be published in one or more of the following ways:

- a) eMaryland Marketplace (or the current State of Maryland publishing application), and/or,
- b) by posting on the Institution’s bid board, and/or,
- c) by direct notification to all proposers.

7. Debriefings

Debriefings of unsuccessful firms should follow the procedures stated in V.C. 12.

## **J. Architectural and Engineering Services**

### **1. General**

The University System of Maryland is committed to a qualifications-based selection process in the procurement of architectural and engineering services (“A/E Services”).

### **2. Applicability**

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

### **3. Request for Procurement of Services**

- (a) The procurement and management of A/E Services 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 A/E 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, or the Institution in those cases where the USM Service Center has delegated the procurement, shall proceed with the procurement of A/E Services. If the project has been delegated to the Institution by the USM Service Center, all references to the USM Service Center in the sections below shall refer to Institution.

4. Qualification Committee

The Procurement Officer shall establish a Qualification Committee composed of 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: (The Procurement Officer may determine the inclusion and sequencing of the following phases and/or events of the procurement process based on the circumstances of the procurement.)
  - (i) Portfolio Phase:
    - (a) The USM Service Center and/or the Institution may elect to initially obtain a Portfolio that provides evidence of the A/E firm's(s) ("A/E Firm") and specific key personnel (such as, but not limited to, the lead design architect/engineer) have the qualifications and experience in designing projects similar to the USM's project ("Portfolio").
    - (b) The Portfolio is usually limited in pages and in the number of technical criteria that are evaluated. The solicitation documents set forth the criteria used to evaluate Portfolios.
    - (c) The Qualification Committee will evaluate each A/E Firm's Portfolio based on the specified technical criteria. The Qualifications Committee will establish a short list.
    - (d) The Qualification Committee shall provide its recommendation of the short-listed A/E Firms to the Procurement Officer.
    - (e) Upon the Procurement Officer's approval, the Procurement Officer will notify all A/E firms of the names of the proposers and the names of the short-listed firms.
    - (f) Short-listed firms will then progress to the next procurement phase. Unless stated otherwise in the solicitation, the short-listed firms are considered to be equal for the next phase of the procurement.

(ii) Technical Proposal Phase:

(a) Technical Proposal:

- (i) Interested architectural and/or engineering firms will be requested to provide a Technical Proposal which will address specified technical criteria such as U.S. Government Standard Forms 330 Part I (Contract Specific Qualifications) and 330 Part II General Qualifications, 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 may either a) recommend a shortlist of qualified A/E Firms of further interest or b) rank all A/E 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.J. 5(c)(iii)]; or
  - (b) Based on the evaluation, the Qualification Committee will determine the short-listed firms who will advance additional Technical Proposal(s) [(Section V.J. 5(c)(ii)(b)] and the Procurement Officer will notify



(b) Additional Technical Proposal(s):

- (i) Short-listed firms may be requested to submit an additional Technical Proposal(s) 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(s) based on the specified technical criteria for the applicable phase of the procurement.
- (ii) If deemed appropriate by the Qualification Committee or as specified in the solicitation documents, interviews will be scheduled with the short-listed firms. (Note: Interviews may occur at any point in the procurement process as deemed by the Procurement Officer.)
- (iv) Further shortlists may occur as the procurement progresses.
- (v) The Qualification Committee will rank all final short-listed architectural and engineering A/E Firms based on the technical proposals and/or interviews, as applicable to the procurement.
- (vi) The Qualification Committee will provide a ranking report of short-listed firms to the Procurement Officer.
- (vii) 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)(iii)).

(iii) Price Proposal/Negotiation Phase:

- (a) The Procurement Officer shall designate a negotiation committee composed of representatives from the USM Service Center and the applicable USM Institution ("Negotiation Committee").
- (b) The Proposer(s) shall submit a detailed price proposal in accordance with the solicitation documents.
- (c) Negotiations shall be conducted between the Proposer(s) and the Negotiation Committee.
- (d) If the Negotiation Committee is unable to negotiate a satisfactory contract, the Negotiation 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 at or under \$1,000,000 (or the current legislated threshold), 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 \$1,000,000 (or the current legislated threshold), the Procurement Officer will forward the contract recommendation on an action agenda for Board of Public Works approval.

8. Debriefing

Debriefing of unsuccessful A/E Firms should follow the procedures stated in V.C.12.

## **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 Education Article, § 12-112(a), Md. Code Ann "...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."

This section includes provisions of Division II of the State Finance and Procurement Article that apply to the System. These include: § 11-205 (Collusion); § 11-205.1 (Falsification of Material Facts); § (Required Clauses-Nondiscrimination Clause); § 13-225 Retainage; Title 14, Subtitles 1 (Preferences to Benefit Disadvantaged Individuals) to the maximum extent practicable and 3 (Minority Business Participation); Title 15, Subtitle 1 (Procurement Contract Administration); and Title 16 (Suspension and 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, Organizations , or Agencies
  - (e) Qualifications-Based Selection Process
  - (f) A/E Services
2. Prior approval must be received from the University System of Maryland Board of Regents (BOR), consistent with the current BOR policy #VIII-3.10-Policy on Approval of Procurement Contracts (<http://www.usmd.edu/regents/bylaws/SectionVIII/VIII310.html>).
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 \$200,000.
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 \$50,000.

#### **D. BOARD OF PUBLIC WORKS**

Capital improvement and service contracts and modifications to such contracts in excess of \$1,000,000 (or the current legislated dollar threshold) 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. Electronic signatures may be accepted as determined by the Procurement Officer.
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 \$1,000,000 (or the current legislated dollar threshold) 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 an 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 ineligible 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 Officer or his/her designee, 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, software, equipment, 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.

**COMPTRROLLER** - 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 acquisition of supplies, services, construction, architectural services, or engineering services. For the purposes of determining award approval, a Contract is for the initial term of the agreement and does not include any renewal options.

**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 and renewal options.

**COST ANALYSIS** - An evaluation of the various cost elements (i.e. 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. Maintenance includes, but is not limited to, painting; re-roofing; hazardous material removal; building envelope repairs; small renovations; landscaping/grounds keeping; renovations to elevators; carpeting; building system renovations, replacements and/or repairs and equipment, such as HVAC (e.g. chillers, boilers, air handlers, etc.); electrical, telecommunications, etc.; security guard; janitorial/housekeeping; staffing for facilities and equipment maintenance contracts; etc.

**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 socially and economically disadvantaged individuals, and, managed by, and the daily business operations of which are contributed by, one or more of the socially and economically disadvantaged individuals who own it. For reporting governed under current State law, Minority Business Enterprises' must be certified by the State of Maryland (see <http://www.mdot.maryland.gov/newMDOT/MBE/Index.html>) and per Maryland Annotated Code Title 14.

**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/Native Americans, 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.

**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 one (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 of trust is recorded in the county land records pursuant to Real Property Article, §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 CONTRACT** - An agreement in any form entered into by a unit for procurement.

**PROCUREMENT OFFICER** - Any person authorized by an Institution and/or by the University 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 Officer 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.

**QUALIFICATION-BASED SELECTION (QBS) PROCESS** –The procurement method to be used in those situations when competitive sealed bidding and/or competitive sealed proposals is impracticable or disadvantageous to the University. QBS involves the selection of the awarded firm(s) based on the firm’s qualifications followed by a negotiated price proposal.

**QUOTATION** - A bid.

**RENEWAL OPTIONS** – An option for renewal or extension of a Contract that may be exercised at either the USM’s or Institution’s sole discretion or by mutual agreement as determined by the Procurement Officer.

**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.

**REVENUE GENERATING** – A contract that produces revenue for an Institution such as, but not limited to, collection of fees, fines; vending or concession sales; pouring and/or naming rights; vendor sales where the USM receives a portion of the sale; educational or licensing fees, transportation or usage/charges, etc.

**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. Services does not include services included within the definitions of maintenance, construction-related services, architectural services, or energy performance contract services.

**SMALL BUSINESS** - A business, other than a broker, which meets the criteria as defined in the State Finance and Procurement Article, Title 14, subtitle 5 Md. Code Ann., as amended and in effect at the time the procurement is conducted.

**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 USM Institution's procurement needs.

**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 or a Qualifications-Based Selection solicitation.

**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.





# PROCUREMENT POLICIES AND PROCEDURES

## Appendix A

### **UNIFORM PROCUREMENT SOLICITATION AND CONTRACT TERMS AND CONDITIONS**

## APPENDIX A - TERMS AND CONDITIONS

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## **I. SOLICITATIONS**

### **A. Written solicitations for contract estimated at \$200,000 or less in value**

1. Content. The invitation for bids shall include the following:
  - (a) A description of the items requested.
  - (b) Time, date, place and form of response requested.
  - (c) The basis for evaluation and award.
  - (d) The name and contact information of the procurement officer to whom inquiries regarding the solicitation may be directed.
  - (e) [MBE NOTICE](#).

### **B. Written Solicitations for contracts estimated to exceed \$200,000 in value**

1. Content. The solicitation shall include the following:
  - (a) 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;
  - (b) The purchase description, delivery or performance schedule, and any special instructions necessary.
  - (c) Whether award shall be made on the basis of the most favorable price, the most favorable evaluated price, or best value. If best value is the basis, the solicitation shall state evaluation criteria.
  - (d) Each solicitation shall require bidders or proposers to acknowledge receipt of addenda.
  - (e) [MBE Notice](#)
  - (f) [Public Information Act Notice](#).
  - (g) [Arrearages](#).
  - (h) [Bid/Proposal Affidavit](#).
  - (i) [Incorporation by reference](#).
  - (j) [Conflicting Terms](#).

**C. Solicitations for construction contracts.**

In addition to the terms and provisions outlined in I.B above, the terms in C.1. below apply as indicated:

**1. Solicitation specific requirements.**

Question	Then	Clause
Is the construction contract reasonably expected to exceed \$100,000?	If Yes  And  And	Notice of Bid Security Requirements  Notice of Payment Bond Requirements  Notice of Performance Bond Requirements
Are there Federal funds or Federal financial assistance involved which require a notice of bid security?	If Yes	Notice of Bid Security Requirements
Are liquidated damages in the best interest of the University for the contract that will result from this solicitation?	If Yes	Liquidated Damages For Solicitation

**2. Bond information generally.**

- (a) 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.
- (b) 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.

## II. CONTRACTS

### A. Contracts of \$25,000 or less

1. Contract may be oral or written;
2. Minimum evidence:
  - a. For oral contracts-a receipt, invoice, or voucher;
  - b. For written contracts-a purchase order or contract;
  - c. For purchases made with a corporate procurement card, charge slip or procurement card log, and receipt.

### B. Contracts exceeding \$25,000 in value:

1. Shall be in writing and signed by an authorized University employee.
2. Shall, at a minimum, include the following elements:
  - a. Identification of the parties to the contract, including contractor taxpayer identification number;
  - b. A statement describing the scope of the contract;
  - c. The dollar value of the contract, if known, or estimated dollar value if the actual value is not known;
  - d. The term of the contract, and if applicable, the completion or delivery date;

In addition to a - d the following uniform contract clauses apply:

- i. [Anti-bribery](#)
- ii. [Compliance with Laws](#)
- iii. [Contractor's Invoices](#)
- iv. [Delivery and Acceptance](#)
- v. [Disputes \(short form\)](#)
- vi. [Drug and Alcohol Free Workplace](#)
- vii. [Indemnification](#)
- viii. [Intellectual Property](#)
- ix. [Modifications or Amendments](#)
- x. [Non-discrimination in Employment](#)
- xi. [Non-hiring of Employees](#)
- xii. [Payment of State Obligations](#)
- xiii. [Policies & Procedures \(subject to existing\)](#)
- xiv. [Political Contribution Disclosure](#)
- xv. [Retention of Records](#)
- xvi. [Specifications shall conform to law](#)
- xvii. [State Exempt from Taxation](#)
- xviii. [Subcontracting or Assignment](#)

3. Contract specific terms and provisions. In addition to items 2. i-xviii, the following contract clauses and provisions apply as indicated:

<b>Question</b>	<b>Then</b>	<b>Clause</b>
Has Procurement Officer authorized contract to be silent?	If No	<a href="#">Maryland Law Prevails</a>
Is this a multi-year contract?	If Yes	<a href="#">Subject to Appropriations</a>
Procurement Officer elects “Termination for Default” short form? <b>OR</b> long form?	If Yes  If Yes	<a href="#">Termination for Default (SF)</a>  <a href="#">Termination for Default (LF)</a>
Procurement Officer elects “Termination for convenience” short form? <b>OR</b> long form?	If Yes  If Yes	<a href="#">Termination for Convenience (SF)</a>  <a href="#">Termination for Convenience (LF)</a>
Will the contractor, its employees or subcontractors be performing work on campus?	If Yes  And	<a href="#">Reporting of Suspected Child Abuse &amp; Neglect</a>  <a href="#">Responsibility for Claims &amp; Liability</a>
Does the contract pertain to: financial services, banking, student loans or financial aid, or debt collection?	If Yes	<a href="#">Gramm-Leach Bliley Act</a>
Does the contract involve the purchase, license, lease, providing access to, supplying, or supporting software?	If Yes	<a href="#">Software Contracts Clause</a>
Does the contract involve IT services that may be accessed by the public?	If Yes	<a href="#">Non-Visual Access Clause</a>
Does the contract involve data collection, analysis, creation of materials, reports, or statistical information etc. for which at the University wants to control the dissemination and distribution? See also below.	If Yes	<a href="#">Confidentiality; Dissemination of Information</a>

Question	Then	Clause
Does the contract involve producing, creating, or providing reports, drawings, studies, estimates, maps, photographs, designs, graphics, mechanical artwork or computations?	If Yes	<a href="#">Ownership of Documents &amp; Materials</a>
Will the contractor have access to, or be responsible for the storage, maintenance and security of, student personal identifiable information protected under FERPA?	If Yes	<a href="#">FERPA</a>
Does the contract anticipate or require performance over time, in phases or steps? i.e., It is more than just the one-time delivery of procured item?  See also:	If Yes	<a href="#">Delays &amp; Extensions of Time</a>  <a href="#">Suspension of Work</a>
Is the contract valued at more than \$200,000, making a contract affidavit required?	If Yes	<a href="#">Contract Affidavit</a>

4. USM contract terms may not be altered or deleted without prior approval of the Procurement Officer or a duly authorized representative.
5. If circumstances necessitate modification of any uniform term or condition, the requested modification(s), including written justification, must be approved by the Procurement Officer and, if appropriate, by legal counsel.

### III. Uniform Construction Contract Clauses

#### A. The following terms, conditions, and provisions shall be used in contracts for construction.

1. Shall be in writing and signed by an authorized University employee.
2. Shall at a minimum, include the following:
  - i. identification of the parties to the contract, including contractor taxpayer identification number;
  - ii. A statement describing 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, the completion or delivery date;

3. In addition to i - iv, the following uniform construction contract clauses apply:

- v. [Anti-bribery](#)
- vi. [Compliance with Laws](#)
- vii. [Contract Affidavit](#)
- viii. [Contract Changes and Modifications](#)
- ix. [Contractor's Invoices](#)
- x. [Cost and Price Certification](#)
- xi. [Default, Delay and Time Extensions](#)
- xii. [Disputes \(construction contracts\)](#)
- xiii. [Drug and Alcohol Free Workplace](#)
- xiv. [Incorporation by Reference](#)
- xv. [Indemnification](#)
- xvi. [Liquidated Damages](#)
- xvii. [Maryland Law Prevails](#)
- xviii. [Non-hiring of Employees](#)
- xix. [Payment of State Obligations](#)
- xx. [Policies & Procedures \(subject to existing\)](#)
- xxi. [Political Contribution Disclosure](#)
- xxii. [Prompt Payment of Subcontractors](#)
- xxiii. [Reporting of Child Abuse or Neglect](#)
- xxiv. [Retention of Records](#)
- xxv. [Site Investigation](#)
- xxvi. [Specifications shall conform to law](#)
- xxvii. [State Exempt from Taxation](#)
- xxviii. [Subcontracting and Assignment](#)
- xxix. [Suspension of Work](#)
- xxx. [Termination for Convenience](#)

In addition to items i-xxx, the following construction contract clauses and provisions apply as indicated:

<b>Question</b>	<b>Then</b>	<b>Clause</b>
Does the contract contain or include estimated quantities?	If Yes	<a href="#">Variations in Estimated Quantities</a>
The Contract exceeds \$100,000?	If Yes	<a href="#">Performance Bond Requirement</a>
	And	<a href="#">Payment Bond Requirement</a>
Contractor has provided 100% Payment & 100% Performance Bonds	If Yes	<a href="#">Retainage</a>
Is this a multi-year contract?	If Yes	<a href="#">Subject to Appropriations</a>
Is this an A/E contract for more than \$100,000?	If Yes	<a href="#">Truth in Negotiation</a>



Question	Then	Clause
		Certification

- B. If circumstances arise that necessitate the modification of any mandatory term or condition, a recommendation containing the necessary modification(s) must be approved by the Procurement Officer and, if appropriate, by legal counsel.

#### IV. Insurance

##### A. Recommended Insurance Requirements.

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

1. The Contractor shall defend, indemnify and save harmless the State of Maryland, the University System of Maryland, the [Institution] and each of their 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 State of Maryland, the University System of Maryland, and the [Institution] 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.

#### **V. 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.

## **VI. MASTER LIST GENERAL TERMS AND CONDITIONS**

### **ANTI-BRIBERY**

The Offeror warrants that neither it nor any of its officer, 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.

### **ARREARAGES**

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.

### **BID/Proposal AFFIDAVIT.**

Each solicitation shall provide notice that bidder or proposer shall complete and submit the University Affidavit in effect at the time of the procurement. (Attached to the solicitation?)

### **BONDS**

#### **NOTICE OF BID SECURITY**

- (1) This solicitation requires the submission of bid security in an amount equal to at least 5 percent of the amount of the bid or price proposal except that, for bids stating a rate but not a total cost, the bid bond shall be in an amount as determined by the procurement officer. Bid security or evidence of the posting of bid security shall be submitted with the bid or proposal.
- (2) The bid bond shall be in the State of Maryland form in effect at the time the solicitation is issued per COMAR 21.06.07.09.

#### **PAYMENT BOND**

A payment bond is required for all construction contracts in excess of \$100,000 in the amount equal to at least 100 percent of the contract price. The payment bond shall be delivered by the contractor to the State not later than the time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder.

The required payment bond shall be in the State of Maryland form in effect at the time the contract is executed per COMAR 21.07.02.10B.

#### **PERFORMANCE BOND**

A performance bond is required for all construction contracts in excess of \$100,000 in the amount equal to at least 100 percent of the contract price. The performance bond shall be delivered by the contractor to the University not later than the time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder.

The required performance bond shall be in the State of Maryland form in effect at the time the contract is executed per COMAR 21.07.02.10A.

### **COMPLIANCE WITH LAWS**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland (whether a domestic business or a foreign corporation subject to registration under the Corporations and Associations Article of the Maryland Annotated Code).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, including but not necessarily limited to: Maryland Building Codes, Americans with Disabilities Act, and the Maryland Occupational Safety and Health Act and related regulations; 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.

### **CONFIDENTIALITY; DISSEMINATION OF INFORMATION**

Contractor shall not release any information related to services or performance of the services under this Contract, nor publish any final reports or documents without the prior written approval of the University. Contractor shall indemnify and hold harmless the State and the University, its officers, agents and employees from all harm which may be incurred by reason of dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by Contractor, its agents or employees.

### **CONFLICTING TERMS**

Any proposal for terms in addition to or different from those set forth in this solicitation (or purchase order) or any attempt by the Offeror to vary any of the terms of this offer by the Offeror'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 Offeror without the additional or different terms. If this solicitation (or Purchase order) is an acceptance of a prior offer by the Offeror, the acceptance is expressly conditioned upon Offeror's assent to any additional or different terms contained herein. The Offeror understand and agrees that the terms and conditions of this solicitation may not be waived.

### **CONTRACT AFFIDAVIT**

Contractor shall execute the Contract Affidavit required by the University which shall be in substantially the same form as the Maryland form at the time the contract is executed by the University.

## **CONTRACTOR'S INVOICES**

Contractor shall include its Taxpayer Identification Number on the face of each invoice billed to the University. If a Purchase Order document is issued, the Purchase Order Number must be included.

## **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.

## **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.

Materials shall be delivered FOB to the point or points specified in the bid or proposal, on the date either agreed to in advance or specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications may be rejected. Rejected materials shall be promptly replaced. If Contractor fails to promptly replace rejected materials, the University reserves the right to purchase replacement materials in the open market. Contractor shall be liable for costs to replace materials incurred by the University which exceed the bid proposal price, including expenses such as, but not necessarily limited to, shipping and delivery, if any.

## **DISPUTES - SHORT FORM**

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

## **DISPUTES – LONG FROM**

- (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.

#### **DRUG AND ALOCOHOL 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.

#### **FERPA**

The Parties agree to maintain the privacy and security of personally identifiable educational records and health information and to prevent disclosure in compliance with Federal laws.

#### **GRAMM-LEACH BLILEY ACT OF 1999**

The Contractor agrees that in performing its obligations under this contract, the Contractor shall comply with all requirements of a non-affiliated third-party who receives a financial institution's consumer or customer information, under the Gramm-Leach-Bliley Act of 1999 and applicable regulations thereto (the "GLB Act"), and other applicable federal and state consumer privacy acts, rules and

regulations. Nonpublic personal information shall have the same meaning as that term is defined in the GLB Act.

- a. The Contractor agrees to disclose such nonpublic personal information for the sole purpose of facilitating the Contractor's performance of its duties and obligations under this contract and will not disclose such nonpublic personal information to any other party unless such disclosure is (i) allowed by the GLB Act and consented to by the Customer, or (ii) compelled by law, in which case the Contractor will provide notice of such disclosure to the Customer.
- b. The Contractor represents and warrants that it will, for so long as it retains nonpublic personal information, implement and maintain in place the necessary information security policies and procedures for (i) protecting the confidentiality of such nonpublic person information, (ii) protecting against any anticipated threats or hazards to the security or integrity of such nonpublic personal information, and (iii) protecting against the unauthorized access to or use of such nonpublic personal information. These terms apply to all subcontractors employed by the Contractor who perform work under the scope of this agreement.

#### **INCORPORATION BY REFERENCE**

The terms of this solicitation and any amendments thereto are made a part of this Contract.

#### **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.

#### **INTELLECTUAL PROPERTY**

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

#### **MANDATED CONTRACTOR REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT**

Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – Policy on the Reporting of Suspected Child Abuse & Neglect, as well as the University Procedures for Reporting Suspected Child Abuse and Neglect. The above-referenced USM/University Policy and Procedures are available in full at the following link: <http://www.usmh.usmd.edu/regents/bylaws/SectionVI/> and are incorporated herein. The University reserves the right to terminate the contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of the University, termination is necessary to protect the safety and welfare of children who come into contact with the University community.

#### **MARYLAND LAW PREVAILS**

This solicitation shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

### **MBE NOTICE**

Minority business enterprises are encouraged to respond to this solicitation.

### **MODIFICATIONS AND AMENDMENTS**

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

### **MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS**

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.

### **NON-DISCRIMINATION IN EMPLOYMENT**

If awarded a contract pursuant to this solicitation, the Offeror agrees to (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, general identification, marital status, national origin, ancestry, genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a) above in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **NON-HIRING OF OFFICIALS and EMPLOYEES**

No official or employee of the State, as defined under General Provisions Article § 5-502 whose duties as such official or employee include matters relating to or affecting the subject matter of this contract shall, during the pendency or term of this contract and while serving as an official or employee of the State, become or be an employee of the contractor or any entity that is a subcontractor on this contract.

### **NON-VISUAL ACCESS CLAUSE**

The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for



compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the costs, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent.

For purposes of this section, the phrase “equivalent access” means that the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

### **OWNERSHIP OF DOCUMENTS AND MATERIALS**

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of the contract shall at any time during the performance of the services be made available to the University upon request by the University and shall become and remain the exclusive property of the University upon termination or completion of the services. The University shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by the contract. The University shall be the owner for purposes of copyright, patent or trademark registration.

### **PAYMENT OF STATE OBLIGATIONS**

Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the University’s receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at a rate of 9% per annum if:

- (1) Contractor submits an invoice for the late payment interest within thirty days after the date of the State’s (or University’s) payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The University) is not liable for interest:

- (1) Accruing more than one year after the 31<sup>st</sup> days after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest.

Charges for late payment of invoices are authorized only 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.

### **POLICIES AND PROCEDURES**

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

## **POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor shall comply with Election Law Article Title 14 Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections (a) before execution of a contract by the State (or University), a county, a municipal corporation or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30 to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website:

[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html)

## **PUBLIC INFORMATION ACT NOTICE**

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 pursuant to the Public Information Act, General Provisions Article, Title 4 of the Annotated Code of Maryland.

## **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under the contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the University, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the services of the Contractor under the contract.

## **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.

## **SOFTWARE CONTRACTS**

- a. As specifically provided by § 21-104, Commercial Law Article, Annotated Code of Maryland, the parties agree that this contract shall not be governed by the Uniform Computer Information Transactions Act (UCITA), Title 22 of the Commercial Law Article of the Annotated Code of Maryland, as amended from time to time. This contract shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than

UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

- b. Contractor agrees that as delivered to buyer, the software does not contain any program code, virus, worm, trap door, back door, timer or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically upon the occurrence of selected conditions, or manually on command of Contractor.

### **SPECIFICATIONS**

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

### **SUBCONTRACTING OR ASSIGNMENT**

The benefits and obligations hereunder shall take effect and be binding upon the parties hereto and neither the contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the University.

### **SUSPENSION OF WORK**

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.

### **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 provided upon request. Where a Contractor is required to furnish and install material in the construction of improvement to real property in performance of the Contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

If the Contractor's price includes the cost of Contractor furnishing any other material, equipment, supplies, or other items in connection with the Contract, the Contractor shall pay the Maryland sales tax.

### **TERMINATION FOR CONVENIENCE – SHORT FORM**

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.

### **TERMINATION FOR CONVENIENCE (LF) - ALTERNATE FORM SUBJECT TO COMAR**

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 COMAR 21.07.01.12A(2). **As used in this section, State shall mean the State of Maryland and the University.**

#### **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.

#### **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.

## **VII. MANDATORY CONSTRUCTION CLAUSES**

### **ANTI-BRIBERY**

### **COMPLIANCE WITH LAWS**

### **CONTRACT AFFIDAVIT**

### **CONTRACTOR'S INVOICES**

### **CONTRACT MODIFICATIONS AND CHANGES**

Changes.

- (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.

### **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.

### **DEFAULT, DELAY AND TIME EXTENSIONS**

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 State 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 State 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 State 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 State 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 State in completing the work.
- (3) If fixed and agreed liquidated damages are provided in the contract and if the State 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 State, 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 judgement, 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 State, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, 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 State 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."

#### **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.

## **DISPUTES – Construction Contracts**

### **1. Disputes.**

- 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.

#### **DRUG AND ALCOHOL FREE WORKPLACE INDEMNIFICATION 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.

#### **LIQUIDATED DAMAGES PROVISION FOR SOLICITATION**

Time will be an essential element of the contract resulting from this solicitation 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) of \_\_\_\_\_, 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.

#### **MARYLAND LAW PREVAILS**

#### **NON-DISCRIMINATION IN EMPLOYMENT**

#### **NON-HIRING OF OFFICIALS AND EMPLOYEES**

#### **PAYMENT OF STATE OBLIGATIONS**

## POLITICAL CONTRIBUTIONS DISCLOSURE

## PRE-EXISTING POLICIES & PROCEDURES

### PROMPT PAYMENT OF SUBCONTRACTORS

- a. This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland. References to “undisputed amount”, “prime contractor”, “contractor” and “subcontractor” have the meanings stated in Section 6.2 a-d herein have the meanings state in COMAR 21.10.08.01.
- b. A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 calendar days after the contractor receives a progress payment or final payment for work under this contract.
- c. If a contractor fails to make payment within the period prescribed in b., a subcontractor may request a remedy in accordance with COMAR 21.10.08.
- d. A contractor shall include in its subcontracts for work under the contract, wording that incorporates the provisions, duties, and obligations of 6.1 a-d: State Finance and Procurement Article, §15-226, Annotated Code of Maryland; and COMAR 21.10.08.

## REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT

### RETAINAGE

- a. This section shall apply if the contractor has furnished 100 percent payment security and 100 percent performance security. The contractor and each subcontractor at any tier shall incorporate the mandatory provisions outlined below in paragraphs b. through d. of this section, into each subcontract for work related to this contract.
- b. The contractor may not retain from any payment due a subcontractor a percent of the payment greater than the percent for retainage specified in the contract.
- c. A subcontractor at any tier may not retain from any payment due a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the subcontractor.
- d. A contractor and a subcontractor are not prohibited, by this section from withholding an amount in addition to retainage if the contractor or subcontractor determines that a subcontractor’s performance under the subcontract provides reasonable grounds for withholding an additional amount.

## RETENTION OF RECORDS

### 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.

## **SPECIFICATIONS SHALL CONFORM TO LAW**

## **STATE EXEMPT FROM TAXATION**

## **SUBJECT TO APPROPRIATION**

### **SUSPENSION OF WORK (Construction Contracts)**

- (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.

## **TERMINATION FOR CONVENIENCE (LF)**

### **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 factual 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 State'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."

## **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.