

APPENDIX B

SOLICITATION TERMS AND CONDITIONS

This solicitation and any subsequent award are further subject to:

1. Proposer's Responsibility.

Proposers are advised to read the requirements very carefully to ensure that each requirement is understood. If in doubt, develop and submit applicable questions in writing to the contact at the Issuing Office. An Offeror's misinterpretation of requirements shall not relieve the Proposer of the responsibility to address accurately the requirements of the RFP or to perform the Contract if awarded. UBALT will enter into a contractual agreement with the selected Developer only. The selected Developer shall be solely responsible for all services as required by this RFP. Subcontractors, if any, will be the responsibility of the Developer and the role of subcontractors must be clearly identified in the proposal. The use of a subcontractor(s) does not relieve the Developer of liability under a Contract.

2. Cancellation of the RFP.

The University may cancel this RFP, in whole or in part, at any time.

3. Site Investigation

By submitting a proposal, the Proposer acknowledges that the Proposer has investigated and been satisfied 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, and electric power. Any failure by the Proposer to become acquainted with the available information will not relieve the Proposer from responsibility for estimating properly the cost of successfully performing the work. The University shall not be responsible for any conclusions or interpretations made by the Proposer of the information made available by the University.

4. Confidentiality.

4.1. UBALT's Information during the Procurement Process: The selected Developer may have access to, may obtain, or be given confidential information, including without limitation information concerning the University's business strategies, political and legislative affairs, students, faculty, employees, vendors, contractors, customer lists, finances, properties, methods of operation, computer and telecommunication systems, and software and documentation. Certain confidential information may be protected under the Family Educational Rights and Privacy Act ("FERPA"), the Gramm-Leach-Bliley Act, and the Maryland Public Information Act. The selected Developer must have administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the UBALT's confidential information. UBALT may conduct discussions with Proposers in order to evaluate their abilities and responsiveness to the RFP. In order to facilitate the discussions and to allow Proposers to propose responsive solutions to UBALT's needs and requirements, UBALT is willing to disclose certain confidential information to Proposers, including without limitation information

concerning UBALT's business strategies, political and legislative affairs, students, employees, vendors, contractors, customer lists, finances, properties, methods of operation, computer and telecommunications systems, and software and documentation ("Confidential Information"). By submitting a proposal in response to this RFP, Proposers agree: (i) to use Confidential Information solely for purposes of responding to and discussing the RFP; and (ii) not to disclose, permit or cause use of, or provide access to Confidential Information to any third person or entity. Upon request by UBALT, Proposers may be required to sign a Non-Disclosure Agreement.

4.2. Proposer's Information: Proposers should give specific attention to the identification of those portions of the Proposal that the Proposer deems to be confidential, proprietary information, or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. Proposers are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination as to whether the information may or may not be disclosed to the requesting party. That decision will take into consideration the Proposer's position regarding its Proposal. A blanket statement by a Proposer that its entire Proposal is confidential or proprietary will not be upheld.

5. Developer's Responsibilities and Use of Subcontractors

The University shall enter into contractual agreement with the selected Developer only. The Developer shall be responsible for all products and/or services required by this RFP. UBALT will consider Proposals that reflect primary and secondary service providers or a prime/subcontractor relationship. There should be proof of ability of the primary to manage a subcontractor and successfully coordinate the delivery of quality service and support in a timely manner. Subcontractors, if any, shall be identified and a complete description of their role relative to the proposal shall be included. UBALT's intent is not to direct the use of any particular subcontractor, however, UBALT strongly encourages the Developer to consider the utilization of local MBEs when possible. In addition, the Developer may not contract with any such proposed person or entity to whom UBALT has a reasonable objection. Notification of such objection will be made by UBALT within fifteen (15) days of Contract. The Developer shall be fully responsible for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them. The use of subcontractors does not relieve the Developer of liability.

6. Assistance in Drafting.

Under the State Government Article, § 15-508 of the Annotated Code of Maryland, an individual or person who employs an individual who assists an executive unit in drafting specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. For questions regarding the applicability of this provision

of the Public Ethics Law, call the State Ethics Commission's toll-free phone number, 877-669-6085, or see the website, <http://www.ethics.gov.state.md.us>.

7. Modifications of Technical Proposal.

Proposers may modify their Technical Proposals at any time prior to the due date and time, provided that the Issuing Office is satisfied that a written confirmation of the modification with the signature of the Proposer was mailed prior to the Proposal due date and time. Technical Proposals may not be modified, supplemented, cured, or changed in any way after the due date and time, unless specifically requested by the University.

8. Addenda Acknowledgment.

Offerors must acknowledge in writing the receipt of any and all addenda, amendments, and/or changes issued. Such acknowledgement must be included in the Technical Proposal.

9. Conflict of Interest.

The Developer awarded the Contract shall provide the specified services for UBALT, and must do so impartially, and without any conflicts of interest. If the Procurement Officer makes a determination that facts or circumstances exist that give rise to or could in the future give rise to a conflict of interest within the meaning of the provisions described in the solicitation, the Procurement Officer may reject a Proposer's Proposal. Developers should be aware that the State Ethics Law, State Government 15-508, might limit the selected Proposer's ability to participate in future related procurements, depending upon specific circumstances. Refer to Paragraphs 15 and 16 above. By submitting a response to the solicitation, the Proposer affirms its understanding and compliance with this clause.

10. Financial Disclosure by Persons Doing Business with the State.

Proposers providing materials, equipment, supplies or services to the University must comply with Section 13-221 of the State Finance & Procurement Article of the Annotated Code of Maryland which requires that every business which enters into contracts, leases or other agreements with the University and receives in the aggregate \$200,000, or more, during a calendar year shall, within 30 days of the time when the \$200,000 is reached, file with the Secretary of State a list containing the names and address of its resident agent, each of its officers, and any individual who has beneficial ownership of the contracting business.

11. Use of Affiliates to Avoid Taxation on Income from State Contracts.

Developer agrees that it will not reduce its income subject to tax by claiming a deduction for royalty or similar payments for trademarks, trade names, or intangible property that shift income from the Developer to an affiliated entity that does not file Maryland income tax returns. Developer agrees that any affiliated entity receiving such payments is doing business in Maryland and is required to file Maryland income tax returns. Developer agrees that during the course of this contract: (1) it shall not make any such royalty or similar payments to any affiliated company; but (2) if any such royalty or similar payments are made, Developer and the affiliated company shall file separate Maryland income tax returns and pay their respective

Maryland income taxes in such a manner that Developer may claim a deduction against Maryland income tax for such payments only if the affiliated company receiving the royalty or similar payment files its Maryland income tax return and pays Maryland tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the Developer does business. Developer agrees that it is authorized to bind its affiliated entities to the terms hereof.

12. Insurance Requirements.

In addition to the requires set-forth in the RFP and as determined by the University at a later date:

The selected Developer shall defend, indemnify, and save harmless the State of Maryland, the University System of Maryland, the University of Baltimore 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 Developer, employees or agents, of the services covered by the contract.

The Developer shall have adequate insurance to secure, pay the premiums for, and keep in force until the expiration of the term of the contract, including renewals.

At the time the contract is made, the Developer shall provide the University with evidence of payment in full of the above insurance coverage throughout the entire term of this contract. Any renewal term under the contract shall also include evidence of payment in full of the above insurance coverage through the entire term of the renewal.

The Developer shall furnish the University with a certificate of insurance as evidence of the required coverage. For all insurance, except for worker's compensation and professional liability insurance, the insurance certificates shall specifically identify the materials and equipment, and shall name the University of Baltimore, the University System of Maryland, and the State of Maryland as an additional insured.

The Developer shall not start work under the awarded contract until the Developer has obtained at its own expense all of the required insurance and the insurance coverage has been approved by the procurement officer; nor shall the Developer allow any subcontractor to start work on any subcontract until all insurance required by the subcontract has been obtained and approved by the Developer and University of Baltimore. Approval of insurance required of the Developer and subcontractors for the University will be granted only after submission to the University of original certificates of insurance signed by an authorized representative of the insurers or, alternately, at the University's request, certified copies of the required insurance policies.

The Developer shall require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers Compensation, in the same manner, including the additional insured requirements as specified for the Developer. The Developer shall furnish subcontractors' certificates of insurance to the University immediately upon request.

Developer shall be as fully responsible to University of Baltimore for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by Developer.

All required insurance policies shall be endorsed to include the following provision; "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until forty-five (45) days prior written notice has been given to the University of Baltimore."

No acceptance or approval of any insurance by the University shall be construed as relieving or excusing the Developer, or the surety or bond, if any, from any liability or obligation imposed upon either or both of them by the provision of the Contract Documents.

The required insurance coverage shall be in force throughout the Agreement term. Should the Developer fail to provide acceptable evidence of current insurance within ten (10) days of receipt of written notice at any time during the contract term, the University shall have the absolute right to terminate the Contract without any further obligation to the Developer, and the Developer shall be liable to the University for the entire additional cost of procuring substitute performance and the cost of performing the incomplete portion of the Contract at time of termination.

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 policy holders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.