

## **SOLICITATION TERMS AND CONDITIONS**

This solicitation and any subsequent award are further subject to:

**1. Contractor's/Offeree's Responsibility.**

Offerors 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 Offeror 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 Contractor(s) only. The selected Contractor(s) shall be solely responsible for all services as required by this RFP. Subcontractors, if any, will be the responsibility of the Contractor(s) and the role of subcontractors must be clearly identified in the proposal. The use of a subcontractor(s) does not relieve the Contractor(s) of liability under a Contract.

**2. Rejection or Acceptance of Proposals.**

The University reserves the right to: (i) accept or reject any and all proposals, in whole or in part; (ii) to waive minor irregularities; and (iii) to negotiate in any manner necessary to best serve the interests of the University. Further, the University reserves the right to make a whole award, multiple awards, a partial award, or no award at all. Offerors judged by the Procurement Officer not to be responsible or Offerors whose Proposals are classified as not reasonably susceptible to being selected for award shall be so notified. The University reserves the right to increase or decrease the quantities of any materials, equipment, supplies or services.

**3. Cancellation of the RFP.**

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

**4. Right to Reject Proposals and Waive Irregularities**

The University reserves the right to reject either all proposals after the opening of the proposals but before award, or any proposal, in whole or part, when it is in the best interest of the State of Maryland. For the same reason, the University reserves the right to waive any minor irregularity in a proposal.

**5. Incurred Expenses.**

UBALT shall not be responsible for any expenses that Offerors may incur in preparing and submitting Proposals or in making oral presentations of their Proposals, if required.

**6. Payment.**

Payments to the Contractor pursuant to the contract shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities as applicable, are prohibited.

For purposes of determining whether a prompt-payment discount, if applicable, may be taken by UBALT, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product.

**7. 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.

**8. Confidentiality.**

- 8.1. UBALT's Information during the Procurement Process:** The selected Contractor 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 Contractor 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 Offerors in order to evaluate their abilities and responsiveness to the RFP. In order to facilitate the discussions and to allow Offerors to propose responsive solutions to UBALT's needs and requirements, UBALT is willing to disclose certain confidential information to Offerors, 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, Offerors 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, Offerors may be required to sign a Non-Disclosure Agreement.

**8.2. Offeror's Information:** Offerors should give specific attention to the identification of those portions of the Proposal that the Offeror 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. Offerors 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 Offeror's position regarding its Proposal. A blanket statement by a Offeror that its entire Proposal is confidential or proprietary will not be upheld.

**9. Multiple/Alternative Proposals**

Proposers may not submit more than one (1) proposal nor may proposers submit an alternate to this RFP.

**10. Alternate Solution Proposals.**

Contractors may submit an alternate to the solution given in this RFP.

**11. Contractor Responsibilities and Use of Subcontractors**

The University shall enter into contractual agreement with the selected Contractor(s) only. The Contractor(s) 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 Contractor to consider the utilization of local MBEs when possible. In addition, the Contractor 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 Contractor 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 Contractor of liability.

**12. Access to Contractor Records for Quality Assurance and Auditing Purposes.**

The Contractor and its principal subcontractors must provide access to pertinent records by University personnel or its representatives (including internal auditors, external auditors, representatives, and agents) to provide quality assurance and auditing.

**13. Arrearages.**

By submitting a Proposal, an Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the University, 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.

**14. Taxes.**

Contractor shall exempt UBALT from taxes as applicable. Exemption Certificates shall be provided upon request.

**15. RFP Response Materials.**

All written materials submitted in response to this RFP become the property of the UBALT and may be appended to any formal documentation that would further define or expand the contractual relationship between UBALT and the Contractor(s).

**16. Maryland Public Ethics Law, Title 15.**

The Maryland Public Ethics Law prohibits, among other things, State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from: (i) submitting a bid or proposal; (ii) negotiating a contract; and (iii) entering into a contract with the governmental unit with which the individual is affiliated per the Maryland Code Annotated, State Government Article, § 15-502.

If the Offeror has any questions concerning application of the State Ethics law to the Offeror's participation in this procurement, it is incumbent upon the Offeror to seek advice from the State Ethics Commission: The Office of The Executive Director, State Ethics Commission, 9 State Circle, Suite 200, Annapolis, Maryland 21401. 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>. The Procurement Officer may refer any issue raised by a Proposal to the State Ethics Commission. The Procurement Officer may require the Offeror to obtain advice from the State Ethics Commission and may reject a Proposal that would result in a violation of the Ethics law.

A resulting Contract is cancelable in the event of a violation of the Maryland Public Ethics Law by a Contractor or any State of Maryland employee in connection with this procurement.

**17. 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>.

**18. Modifications of Technical Proposal.**

Proposers may modify their Technical Proposals by e-mail communication 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.

**19. Additional Technical Information**

At any given time during the procurement process, the Issuing Office may request additional technical response requirements. Only eligible firms at that given time will be invited to provide the additional information. Additional information will be used to further evaluate the Proposers' technical qualifications.

**20. 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.

**21. Duration of Offers.**

Proposals (consisting of a Technical Proposal and, if applicable, a Price Proposal) shall remain irrevocable for 120 days following the closing date of the Price Proposal due date. This period may be extended by mutual agreement between the Offeror and the University.

**22. Minority Business Enterprises.**

Minority Business Enterprises (MBE) are strongly encouraged to respond to this solicitation notice. If a sub-contracting goal and/or subgoals has been set in Section I of the solicitation, refer to Appendix M for further information regarding required process and documentation.

For more information on the State's MBE program or questions related to certification, please contact MDOT's Office of Minority Business Enterprise/Equal Opportunity, telephone 410-865-1269 or view the MDOT website <http://www.mdot.state.md.us/mbe/index.html>.

Refer to Appendix M of the Solicitation regarding the MBE subcontracting goals set for the resulting contract as well as information regarding the requirements and forms associated with the State of Maryland's MBE program.

**23. Living Wage Requirements.**

A solicitation for services under a contract valued at \$100,000 or more may be subject to Maryland's Living Wage requirement, located at Maryland Code Annotated, State Finance and Procurement Article, Title 18, §§ 18-101 through 18-109. Additional information regarding the Living Wage requirement is contained in Appendix B, if applicable to this solicitation. An Offeror that fails to submit and complete the Affidavit of Agreement contained in Appendix B, if applicable, may be deemed not responsible by the Issuing Office. The University reserves the right to waive this requirement at any time during the procurement process.

**24. Conflict of Interest.**

The Contractor 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 Contractor's Proposals. Contractors should be aware that the State Ethics Law, State Government 15-508, might limit the selected Contractor'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 Contractor affirms its understanding and compliance with this clause.

**25. Proposal Acceptance**

The University reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP; to waive minor irregularities; or to negotiate with all responsible proposers, in any manner necessary, to serve the best interest of the University. Further, the University reserves the right to make a whole award, multiple awards, a partial award, or no award at all.

**26. 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.

**27. Debriefing of Unsuccessful Proposers**

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the procurement officer within 10 days after the proposer knew or should have known its proposal was unsuccessful. Requests received after 10 days from the Proposers' notice may not be scheduled, as the University's sole discretion. The debriefing shall be limited to discussion of the unsuccessful proposer's proposal only and shall not include a discussion of a competing proposer's proposal. Debriefings shall be conducted at the earliest feasible time. A summarization of the procurement officer's rationale for the selection may be given. The debriefing may not include discussion or dissemination of the thoughts, notes, or ranking from an individual Evaluation Committee Member.

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

Contractor 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 contractor to an affiliated entity that does not file Maryland income tax returns. Contractor agrees that any affiliated entity receiving such payments is doing business in Maryland and is required to file Maryland income tax returns. Contractor 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, contractor and the affiliated company shall file separate Maryland income tax returns and pay their respective Maryland income taxes in such a manner that contractor 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 contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof.

**29. Payments to Contractors by Electronic Funds Transfer**

If the annual dollar value of this contract will exceed \$200,000.00, the Proposer is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants the Contractor an exemption.

By submitting a response to this solicitation, the Proposer agrees to accept payments by EFT. The selected Proposer shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must

include the business identification information as stated on the form and include the reason for the exemption.

The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland:

[http://comptroller.marylandtaxes.gov/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GA\\_DX10Form20150615.pdf](http://comptroller.marylandtaxes.gov/Vendor_Services/Accounting_Information/Static_Files/GA_DX10Form20150615.pdf)

### **30. Insurance Requirements**

The selected Contractor 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 Contractor, employees or agents, of the services covered by the contract.

The selected Contractor shall secure, pay the premiums for, and keep in force until the expiration of the term of the contract, including renewals, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under the contract:

- Comprehensive 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
- Workers Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland
- 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
- Property damage liability insurance with a limit of not less than \$2,000,000 for each accident
- 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 and \$2,000,000 for each accident
- Professional Liability with a limit of not less than \$1,000,000

At the time the contract is made, the Contractor 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 Contractor 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 Contractor shall not start work under the awarded contract until the Contractor 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 Contractor allow any subcontractor to start work on any subcontract until all insurance required by the subcontract has been obtained and approved by the Contractor and University of Baltimore. Approval of insurance required of the Contractor 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 Contractor 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 Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the University immediately upon request.

Contractor 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 Contractor.

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 Contractor, 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 Contract Term. Should the Contractor 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 Contractor, and the Contractor 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.

### **31. Payment and Performance Bonds**

May be applicable at the sole discretion of the University to any resulting project/work done under the resulting contract.