TO: All Prospective Proposers
FROM: Valerie Rolandelli
Associate Vice President
301-985-7895

RE: RFP 91268 – Facilities and Equipment Maintenance
Addendum #8 dated 02/04/2015

The following amends the above referenced RFP documents. Receipt of this addendum is to be acknowledged by completing the enclosed "Acknowledgement of Receipt of Addenda Form” and including it in the Technical Proposal. As well, the addendum number and date should be noted in the appropriate space on the Price Proposal form.

1. Attached please find the UMUC Sample Master Contract. Proposers are to acknowledge and warrant review of this Sample Master Contract within its Technical Proposal. A form for doing so is included with this Addendum.

2. The due date and time for the Initial Technical Proposal REMAINS as Tuesday, February 10, 2015, on or before 5:00 p.m. Proposals must be delivered to the Issuing Office per Section I, Paragraph 2 of the solicitation document. Refer also to Section I, Paragraph 6 of the solicitation document for further information about the Proposal Closing Date/Due Date and Time. Late proposals cannot be accepted.

End of Addendum 8 dated 02-04-2015
ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

RFP NO.: 91268

INITIAL TECHNICAL PROPOSAL DUE DATE:
Tuesday, February 10, 2015 on or before 5:00 pm EDT

RFP FOR: FACILITIES AND EQUIPMENT MAINTENANCE

NAME OF PROPOSER: ________________________________

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA

The undersigned, hereby acknowledges the receipt of the following addenda:

Addendum No. ___1___ dated 01-20-2015
Addendum No. ___2___ dated 01-22-2015
Addendum No. ___3___ dated 01-26-2015
Addendum No. ___4___ dated 01-28-2015
Addendum No. ___5___ dated 01-30-2015
Addendum No. ___6___ dated 02-02-2015
Addendum No. ___7___ dated 02-03-2015
Addendum No. ___8___ dated 02-04-2015
Addendum No. _______ dated _________

As stated in the RFP documents, this form is included in our Technical Proposal.

_________________________________________________________________________
Signature

_________________________________________________________________________
Name Printed

_________________________________________________________________________
Title

_________________________________________________________________________
Date

END OF FORM
ACKNOWLEDGEMENT/WARRANT OF REVIEW OF UMUC SAMPLE MASTER CONTRACT
RFP 91268 – Facilities and Equipment Maintenance

PROPOSER: ____________________________________________________________

Federal Identification Number/Social Security Number:_______________________

Proposer’s Address: ______________________________________________________

DATE_______________________

Per Section I, Paragraph 8 of the Solicitation, the undersigned hereby warrants that they have reviewed the UMUC Sample Master Contract issued with Addendum 8 of the Solicitation. The undersigned further warrants that they will execute such a contract upon request by UMUC, as may be negotiated. Any exceptions to the UMUC Sample Contract must be provided in the Technical Proposal. Proposer also acknowledges that UMUC is under no obligation to accept such requested exceptions and, as a result of such exceptions, may elect to find the Proposer not susceptible of the award(s) of the Contract(s).

Authorized Signature to bind firm to Offer: Contact name and information for Proposal contents:

Printed Name:_______________________ Name:_______________________
Signature:__________________________ Title:________________________
Title:______________________________ email:________________________
Date:______________________________ Direct dial phone number_______

Extension number (if applicable)___
UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE
CONTRACT #91268

MAINTENANCE CONTRACT

____________________, 2015

CONTRACTOR:
Federal Employer ID: ____________
Address: __________________________________________
Contact Person: __________________________
Contact Phone: __________________________
Contact Fax: __________________________
Contact Email: __________________________

UMUC Ordering Office: Office of Facilities
Project Coordinator: __________________________
Coordinator Phone: __________________________
Coordinator Fax: __________________________
Coordinator Email: __________________________

UMUC Procurement Officer (ie Contract Manager): Valerie Rolandelli
Phone Number: 301-985-7895
E-mail address: valerie.rolandelli@umuc.edu
THIS CONTRACT ("Contract") is made as of this _____ day of ____________, 2015 by and between ____________________, a corporation organized under the laws of the State of ________, with offices at ______________________, ______, __, ________, hereinafter referred to as "Contractor," and the University of Maryland University College (UMUC), a constituent institution of the University System of Maryland, an agency of the State of Maryland, with offices at 3501 University Boulevard East, Adelphi, MD 20783, hereinafter referred to as the "University."

RECITALS

The University issued solicitation documents (Reference 91268) for Facilities and Equipment Maintenance on January 7, 2015, as amended from time to time (the "Solicitation"), to solicit a provider of facilities and equipment maintenance. Contractor submitted a technical proposal dated __________ 2015, (if applicable) which was clarified via ______ on __________ and (best and final) price proposal dated ____________, 2015, and accepted by the University ("collectively Proposal") in response to the Solicitation, and the University subsequently selected the Contractor as the awardee of this Contract.

THE PARTIES AGREE AS FOLLOWS:

1. CONTRACT DOCUMENTS, AND TERM

1.1 This Contract consists of multiple documents as follows in order of precedence:

   o This Contract Form (pages 1 through ___);
   o If applicable, The Solicitation #91268 and all addenda to the Solicitation; for ease of reference, the compiled questions/issues with responses issued with the addenda are attached as Exhibit ____ to this Contract;
   o Contractor’s Technical Proposal dated __________ as to Sections ___ Staffing Requirements/Key Personnel and _____ Approach to Providing the Scope inclusive of the Questionnaire; and,
   o Statements of work, if any, issued from time to time, pursuant to this Contract (each of which is incorporated in this Contract whether or not physically attached hereto).

1.2 This Contract shall be in effect from September 1, 2015 through August 31, 2018 ("Initial Term") unless otherwise extended, expired or terminated pursuant to this Contract. Following the Initial Term of the contract, at the sole discretion of UMUC, there will be three (3) additional three-year renewal terms, or again, at UMUC’s sole discretion and sole option, the contract may be renewed on an annual or month-to-month basis not to exceed a cumulative total of nine (9) additional years. ["Renewal Term(s)"].

1.3 Upon expiration or termination of this Contract, Contractor shall return all furniture, fixtures, equipment, supplies, tools, and materials provided by the University in the same condition as when provided except for normal wear and tear.
2. **SCOPE OF WORK**

2.1 Contractor shall provide or cause to be provided facilities and equipment maintenance scope of work (“SOW” or “Scope”) as described in the Contract Documents.

2.1.1 Contractor shall perform all requirements that Contractor indicated in its Proposal would be performed in-house (i.e. directly by Contractor).

2.1.2 For any of the SOW that Contractor indicated in its Proposal might be provided by a third party, Contractor may request that the scope be subcontracted in accordance with the RFP. The University in its sole discretion may grant or reject Contractor’s request, giving due consideration to any justification provided by Contractor. If the University rejects the Contractor’s request, Contractor shall perform the scope of work.

2.1.3 For any scope of work that Contractor indicated in its Proposal would be performed by a third party or scope of work for which the University has approved subcontracting, Contractor shall develop a statement of work and procure the scope of work of a subcontractor in accordance with the RFP. If the University does not approve Contractor’s proposed statement of work, Contractor shall procure the scope of work of a subcontractor based on a statement a work dictated by the University.

2.2 The University’s approval of subcontracting is not a release of the Contractor from any obligation of the Contractor under this Contract. When permitted, Contractor shall cause subcontractors to perform required scope and monitor performance of subcontractors. Contractor is responsible for all acts or omissions of subcontractors and for payment to subcontractors.

2.3 Contractor shall create and maintain all records required under the RFP. Contractor agrees that any such records are records of the University and may be subject to disclosure under the Maryland Public Information Act. Contractor shall make such records available to the University at all reasonable times. In accordance with Section 4 of this Contract, upon expiration or termination of this Contract, Contractor must provide all records and/or work order data to the University in a readable and usable format approved by the University.

2.4 Notwithstanding any provision of this Contract to the contrary, the University reserves the right to add scope of work/requirements or new facilities or equipment within the general scope of the procurement. Contractor may request equitable adjustment of its fees for such additions. Any adjustment in fees must be mutually agreed to by the parties and reduced to writing amending this Contract. Failure of the parties to reach agreement will not relieve Contractor of its obligation to perform required scope of work.

2.5 All matters regarding operation of University’s facilities and equipment are subject to the approval of the University. The University shall not unreasonably withhold approval or interfere in Contractor’s right and obligation to perform required scope of work.

2.5.1 Standard Processes and Operating Procedures. Within ninety (90) days of the commencement of the Contract, the Contractor shall provide standard operating procedures to the University’s Project Coordinator or designee to ensure proper management, proper staffing levels, and operating procedures, including acceptance processes and procedures as may be applicable, for the Scope are established in writing and mutually agreed upon in writing. Both parties acknowledge that the scope of work,
standard processes and operating procedures, and related plans are in continuous
development and therefore may be revised as necessary and appropriate, and may be
incorporated in this Contract via amendment. The University shall be the final decision
making authority for all matters related to the provided Scope of Work.

2.6 The UMUC Office of Facilities will designate a staff member to act as coordinator
(“Project Coordinator”) between UMUC and the Contractor. Throughout the period of
the Project, copies of all correspondence, work products, specifications, estimates and
other materials prepared by the Contractor should be directed to the Project Coordinator
and also to any other UMUC personnel designated by the Project Coordinator. Direct
contact or communication by the Contractor with other UMUC offices or any other entity
concerning the Project shall be made only with the prior knowledge and concurrence of
the Project Coordinator.

2.7 The professional maintenance team for the Contract shall be the same team identified in
the Contractor’s submittal responding to UMUC’s solicitation unless (a) a change is
requested by the Contractor and approved in writing by the Project Coordinator; or (b) a
change is requested in writing by the Project Coordinator for good cause, in which case
the Contractor shall make an appropriate substitution, subject to UMUC’s approval, and
notify UMUC in writing. Major changes in the Contractor’s organization or personnel
(other than the Contractor’s Team) shall be reported to UMUC in writing as they occur.

2.8 All terms and conditions of UMUC’s solicitation, and any amendments thereto, are made
a part of this Agreement unless expressly contradicted by a term or condition of this
Agreement. Proposals or suggestions of the Contractor for changes in the solicitation or
the terms and conditions of the contract are not binding upon UMUC and are not a part
of this Agreement unless set forth in an amendment of the solicitation or in this
Agreement and agreed to in writing by UMUC.

3. FEES AND PAYMENT

3.1 Contractor’s fees shall not exceed the rates set forth in the Contract per the Contractor’s
(best and final) price proposal dated ______________. Invoices are to be submitted
monthly to the satisfaction of the University’s designated representative and shall be
payable as provided in this Section 3 of the Contract.

3.2 As compensation for satisfactory performance of work, the University will pay the
Contractor an amount not to exceed $_________ for the total first three (3) years of the
contract. The pricing per year is per the break out schedule in the Contractor’s (Best
and Final) Price Proposal inclusive of an annual Performance Bond in the amount of
$_________. The initial year’s payment totals $____________ to be paid in equal
monthly payments of $__________.

3.3 For subcontracted work approved by the University, the University shall reimburse
Contractor for the cost of such work plus a fixed percentage mark up. The fixed
percentage Mark-Up will be ____% for those subcontracts less than $100,000; ____%
for subcontracts from $100,000 to $250,000, and ____% for those subcontracts more
than $250,000. A ____% fixed percentage Mark-Up is applicable to subcontracts for
materials and supplies.

3.4 If in the opinion of the Procurement Officer, Contractor fails to perform any of the scope
of work in a satisfactory and timely manner, the University may refuse or limit payment of
Contractor’s fees. Such refusal or limitation is in addition to, and not in lieu of, other remedies available to the University.

3.5 The Contractor shall be paid only for items or work that are specifically named in this Contract. No additional costs for items or work will be paid by the University without its prior express written consent. The work is to be delivered free from all claims, liens, and charges whatsoever.

3.6 As compensation for satisfactory performance of Scope, the University will pay Contractor no later than thirty (30) days after the University’s receipt of a proper invoice from Contractor. Charges for late payment of invoices will be only as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended.

3.6.1 Payment requests (invoices) shall be submitted electronically to the Accounts Payable Department, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD 20783-8002 at accountspayable@umuc.edu. Contractor may also send the invoices to the UMUC Ordering Department (as noted on the cover page of this Contract). The University’s Purchase Order number, as may be applicable and which (are) is issued for accounting purposes only, must be noted on all invoices. Each invoice must also include the Contractor’s Taxpayer Identification Number, which is ______________.

3.7 All fees are exclusive of applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added and other taxes, tax-like charges and tax-related surcharges. The University is generally exempt from such taxes, and Contractor agrees not to charge the University for such taxes in accordance with applicable law. The University will provide exemption certificates upon request.

3.8 Electronic funds may be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller’s Office grants Contractor an exemption. 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.

4. WORK PRODUCT

4.1 Contractor shall complete all reports and presentations required by the University.

4.2 Contractor agrees that all research, notes, data, computations, estimates, reports or other documents or work product obtained by or produced by Contractor under this Contract (the “Work”) shall be the sole and exclusive property of the University. Upon the University’s request or upon the expiration or termination of this Contract, Contractor shall deliver or return all copies of the Work to the University. The Contractor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product.

4.3 Notwithstanding the terms of Paragraph 4.2, Contractor is permitted to retain all rights to the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by the Contractor prior to, or acquired during, the performance of the Scope under this Contract.
4.4 Contractor and University intend this Contract to be a contract for maintenance work and each considers the Work to be a work made for hire. If for any reasons the Work would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to University, its successors, assigns, the entire right, title and interest in and to the copyright and any registrations and copyright applications relating thereto and renewals and extensions thereof, and in and to all works based upon, derived from or incorporating the Work, and in and to all income, royalties damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

4.5 Contractor agrees to execute all documents and to perform such other proper acts as University may deem necessary to secure for University the rights in the Work.

4.6 In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.

5. INTENTIONALLY NOT USED

6. INTELLECTUAL PROPERTY

6.1 Neither party may use the other party’s name, trademarks or other proprietary identifying symbols without the prior written approval of the other party.

6.2 Contractor agrees to defend upon request and indemnify and hold harmless UMUC, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or work under this Contract.

7. CONFIDENTIAL INFORMATION

7.1 Contractor acknowledges and understands that in connection with this Contract, the performance of the Scope of Work and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the University’s Confidential Information (as defined herein). For purposes of this Contract, “Confidential Information” means all information provided by the University to Contractor, including without limitation information concerning the University’s business strategies, political and legislative affairs, students, employees, vendors, contractors, student records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, and software and documentation. Confidential Information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

7.2 Contractor shall use the Confidential Information only if and when required for the performance of the Scope, and for no other purpose whatsoever, and only by Contractor employees engaged in that performance.

7.3 Contractor shall not, in any manner whatsoever, disclose, permit access to, or allow use of Confidential Information to any person or entity except as specifically permitted or required under this Contract.
7.4. Contractor acknowledges and understands that UMUC is required to protect certain Confidential Information from disclosure under applicable law, including but not limited to, the Family Educational Rights and Privacy Act ("FERPA"), the Gramm Leach Billey Act ("GLBA"), or the Maryland Public Information Act ("PIA"), including regulations promulgated there under, as the laws and regulations may be amended from time to time (collectively the “Privacy Laws”). The Confidential Information that is protected under FERPA was provided to the Contractor as it is handling an institution service or function that would ordinarily be performed by UMUC’s employees. The Contractor agrees that it shall be obligated to protect the Confidential Information in its possession or control in accordance with the Privacy Laws to the same extent as UMUC would be obligated if the Confidential Information was in the possession or control of UMUC. The Contractor further agrees that it is subject to the requirements governing the use and redisclosure of personally identifiable information from education records as provided in FERPA.

7.5 Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify the University, and before disclosing such information shall allow UMUC reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

7.6 Contractor’s obligations with respect to Confidential Information shall survive the expiration or the termination of this Contract.

7.7 Contractor acknowledges that Contractor’s failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause the University grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this Article 6 shall be a material breach of this Contract.

7.8 Contractor agrees and acknowledges that it is not the custodian of any Confidential Information that may be in Contractor’s possession or control. Contractor shall forward any request for disclosure of Confidential Information to:

Office of Legal Affairs
University of Maryland University College
3501 University Boulevard East
Adelphi, MD 20783

7.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (a) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (b) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (c) was independently developed by Contractor without violation of this Contract, or (d) Contractor and the University agree in writing to disclose. Contractor shall be deemed to have met its nondisclosure obligations under this section as long as it exercises the same level of care to protect the Confidential Information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

7.10 All Confidential Information received by Contractor shall be returned to the University or destroyed upon completion or termination of this Contract.
8. RELATIONSHIP OF THE PARTIES

8.1 Nothing in this Contract shall be construed to establish a relationship of servant, employee, partnership, association, or joint venture between the parties. Neither party shall bind or attempt to bind the other to any contract, warranty, covenant or undertaking of any nature whatsoever unless previously specifically authorized in writing in each instance.

8.2 It is understood and agreed that Contractor is an independent contractor of the University, and not an employee. Except as set forth in this Contract, the University will not withhold income taxes, social security or any other sums from the payments made to Contractor hereunder. All employees or contractors of Contractor shall in no way be considered employees of the University, but rather they shall be employees or contractors of Contractor, and Contractor shall bear full responsibility for compensating those persons and for the performance of the Scope by way of them.

8.3 Each party reserves the right to review and approve all press releases or other public communications of the other party that may affect the party's public image, programs or operations.

9. DISTRIBUTION OF RISK

9.1 Contractor shall maintain in full force and effect adequate insurance coverage to protect against the risks associated with the performance of Scope of Work under this Contract. Contractor shall also maintain in full force and effect workers’ compensation insurance as required by the laws of the jurisdiction in which the Scope of Work is performed.

Contractor is solely responsible for its subcontractors, and at its sole discretion, may also require, but is not obligated to, its subcontractors, if any, who may enter upon University premises to maintain such insurance. Contractor, and its subcontractors, shall furnish the University, when requested, with copies of policies or other satisfactory proof of insurance. (See Section 10.5 regarding subcontracting.)

9.2 Contractor agrees to indemnify and hold harmless the University and the State of Maryland, their officers, employees, and agents, from any and all costs (including the costs, expenses, and reasonable attorney's fees on account thereof), liabilities, claims, or demands arising out of or related to Contractor’s performance under this Contract that may be made: (1) by anyone for injuries to persons or damage to property resulting from Contractor’s acts or omissions or those of persons furnished by Contractor or (2) by persons furnished by Contractor or Contractor's subcontractors under Workmen’s Compensation or similar acts. Contractor also agrees to defend the University at its request, against any such claim or demand. The University agrees to notify Contractor promptly of any known liabilities, claims, or demands against the University for which Contractor is responsible hereunder, and Contractor agrees to at UMUC’s request defend the University or settle any such liabilities, claims, or demands.

9.3 Neither party shall be liable to the other for indirect, consequential, incidental, punitive, exemplary, or special damages, or losses, including without limitation lost profits and opportunity costs.
9.4 The University shall not assume any obligation to defend, indemnify, hold harmless, or pay Attorney's fees that may arise from or in any way be associated with the performance or operation of this agreement.

10. GENERAL TERMS AND CONDITIONS

10.1 Termination for Default. 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. The University will provide Contractor a reasonable opportunity, not to exceed 10 business days, to cure the act or omission, provided such opportunity to cure does not extend the deadline for any deliverables and does not cause the University further damage. All finished or unfinished work provided by the Contractor, to which the University is entitled pursuant to this Contract shall 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.

10.2 Termination for Convenience. The performance of work under this Contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.

10.2.1 Termination by Notice. In addition to the above paragraph in this Section 10.2, UMUC at its sole option may discontinue the maintenance activities of any or all of the vendor(s) at any time during the Initial Term or Renewal Term(s) with 60 days notice with no further obligations to the Contractor and with no penalty. If UMUC elects to discontinue any or all contract(s), a summation of work in progress for the contract will be made and a mutual agreement as to how to finalize this work in progress will be made.

10.3 Delays and Extension 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 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 or the University, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, 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.

10.4 Suspension of Work. The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the University.

10.5 Subcontracting and Assignment.

10.5.1 The Contractor may not subcontract any portion of the Scope provided under this Contract without obtaining the prior written approval of the University nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of UMUC. The University shall not be responsible for the fulfillment of the Contractor’s obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that UMUC deems necessary to protect its interests. Contractor shall remain responsible for performance of all Scope under this Contract, and shall be subject to liability to the University for acts and omissions of subcontractors.

10.5.2 Neither party may assign this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Contractor may assign this Contract to any parent, subsidiary, affiliate or purchaser of all or substantially all its assets with notice to the University. Contractor may designate a third party to receive payment without the University’s prior written consent unless in conflict with Maryland or federal law, but shall provide the University with notification thereof.

10.5.3 Minority Business Enterprise Sub-contracting Goal and Associated Liquidated Damages. UMUC has established a Minority Business Enterprise (MBE) subcontracting goal of 25% of the total cumulative contract dollar amount under RFP #91268, as well as sub-goals of 8% African American; 3% Hispanic American; and 3% for Asian American, for the Initial Term and all Renewal Terms of the Contract. Refer to Appendix M of RFP #91268 for requirements of the MBE Program. For ease of references this appendix is attached to this Contract as Exhibit C.

Liquidated Damages. This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision. Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): $25.00 per day until the monthly report is submitted as required.

b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): $100 per MBE subcontractor.

c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.

d. Failure to meet the Contractor’s total MBE participation goal and the subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

e. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract: $100 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

10.6. Maryland Law Prevails. The laws of the State of Maryland shall govern the interpretation and enforcement of this Contract.

10.7 Contract Integration and Modification. This Contract and the documents incorporated herein form the entire agreement of the parties with respect to the subject matter of this procurement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Contract may be amended with the written consent of both parties. Amendments may not significantly change the scope of the Contract.

10.8 No Third Party Beneficiaries. This Agreement is only for the benefit of the undersigned parties and their permitted successors and assigns. No one shall be deemed to be a third party beneficiary of this Agreement.

10.9 Notices. Notices under this Contract will be written and will be considered effective upon personal delivery to the person addressed or five (5) calendar days after deposit in any U.S. mailbox, first class (registered or certified) and addressed to the other party as follows:

For the University:

University of Maryland University College
Office of Strategic Contracting, ADMIN 2344
Attn: Procurement Officer
3501 University Blvd East
Adelphi, MD 20783-8044
For the Contractor:

________________________
________________________
________________________

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

10.11 **Retention of Records.** Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State and will make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

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

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

10.14 **Contingent Fee Prohibition.** 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 Contract, 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 Contract.

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

10.16 **Political Contribution Disclosure.** Contractor shall comply with Election Law Article Sections 14-101 through 14-108 of the Annotated Code of Maryland, which requires that every person making contracts with one or more governmental entities during any 12 month period of time involving cumulative consideration in the aggregate of $100,000 or more to file with the State Board of Elections a statement disclosing certain campaign or election contributions.
10.17 **Anti-Bribery.** The Contractor warrants that neither it nor any of its officers, directors or partners, nor any 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 the federal government.

10.18 **Ethics.** This Contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any UMUC employee in connection with this procurement.

10.19 **Compliance with Laws.** The Contractor hereby represents and warrants that:

10.19.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

10.19.2 It is not in arrears with respect to the payment of any monies 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;

10.19.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

10.19.4 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.

10.20 **Indemnification.** UMUC 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 Contract.

10.21 **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.

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

10.23.1 The contractor shall not start work under this contract until the Contractor has obtained at its own expense all of the insurance called for hereunder and such insurance 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 Maryland, University College. 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.

10.23.2 The Contractor may require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, Workers Compensation and Employers Liability insurance, in the same manner, including the additional insured requirements in paragraph 10.23.5, as specified by the Contractor. The Contractor shall furnish subcontractors’ certificates of insurance to the University immediately upon request.

10.23.3 All insurance policies required hereunder 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.”

10.23.4 No acceptance and/or approval of any insurance by University of Maryland University College 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.

10.23.5 The University of Maryland, University College, the University System of Maryland and the State of Maryland (including their elected or appointed officials, agents and employees) are to be named as additional insured under all coverages except Workers Compensation, and the certificates of insurance (or the certified policies, if requested) must so indicate through inclusion of appropriate endorsement. Coverage afforded under this paragraph shall be primary to any other insurance of self-insurance, whether or not such other insurance or self-insurance is stated as primary, excess or contingent, as respects the above additional insured, their elected and appointed officials, agents and employees.

10.23.6 Insurance coverage required in these specifications 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.

10.23.7 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering service exclusion that would
preclude University of Maryland University College or participation institutions from supervising or inspecting the operations of the contractors as the end result.

10.23.8 The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of agents or subcontractors and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

10.23.9 The Contractor shall be as fully responsible to the University for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by the Contractor.

10.23.10 All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland and acceptable to University. The insurers must have a policyholders’ rating “A-” or better, and a financial size of “Class VII” or better in the latest edition of Best’s Insurance Reports.

10.23.11 UMUC will consider deductibles or self-insured retention as part of its review of the financial stability of the bidder. Any deductibles or self-insured retention shall be disclosed in the Contractor’s proposal and shall be assumed by the Contractor.

10.23.12 The Contractor shall purchase the following insurance coverages:

A. Commercial General Liability Insurance or its equivalent, for bodily injury, personal injury and property damage, including loss of use. It is preferred that coverage be provided on an “occurrence” basis. If “claims made” forms are submitted, the requirements noted in Item 10.II.5 below must be met. Such Commercial General Liability policy shall include the following extensions:

i. It is preferred that the general aggregate limit applies separately to this contract:

ii. Premises/Operations:

iii. Actions of Independent Contractors:

iv. Products/completed Operations to be maintained for two (2) years after completion of the contract.

v. Contractual Liability including protecting for the Contractor for claims arising out of liability assumed under this contract.

vi. Personal injury liability including coverage for offenses related to employment, and for offenses assumed under this contract (delete any standard employment and contractual exclusions if contained in the personal injury coverage section):

vii. Business Automobile Liability, which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use of any owned, hired or non-owned motor vehicles, uninsured motorist’s insurance and automobile contractual liability.
NOTE: INSURANCE MUST BE ON A PRIMARY BASIS. CONTRACTUAL REQUIREMENTS MUST BE CLEARLY INDICATED ON CERTIFICATE OR BY ENDORSEMENTS.

B. Workers Compensation – statutory benefits are required by Maryland law or other laws as required by labor union agreements, including standard Other States coverage; Employers Liability coverage.

10.23.13 The coverage listed in above shall be written for not less than the following limits of liability. Limits can be furnished by a combination of primary and excess (umbrella) policies.

10.23.14 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

10.23.15 Business Automobile Liability -
- $2,000,000 each accident

10.23.16 Workers Compensation insurance – statutory requirements. Employer’s liability insurance - $1,000,000 each accidental injury; and $1,000,000 policy limit for disease.

10.23.17 Tort-Claim Act – It is agreed that the contractor and its insurers will not raise or use, in the adjustment of claims or in the defense of suits against any participating USM institution, any immunity of the insured from tort liability, (including Maryland Tort Claim Act), including any limitation of liability, unless requested by any participating institution.

10.23.18 If insurance required in terms 10.23.12 A. i. through vii. above has been issued on a “claims made” basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described above remain the same. The Contractor must either:

i. Agree to provide certificates of insurance evidencing the above coverages for a period of three (3) years after final payment for the contract. Such certificates shall evidence a retroactive date no later than the beginning of the Contractor's or Subcontractor's work under this contract, or

ii. Purchase an extended (minimum three (3) years) reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself, and

iii. The “retroactive date” must be effective prior to the inception of the work under this contract, and

iv. No “sunset” clauses shall apply.
10.24 University Work Rules:
Employees and agents of Contractor and any subcontractors shall while on the
premises of the University, comply with all University rules and regulations including,
where required by Government Regulations, submission of satisfactory clearance from
the U.S. Department of Defense or other Federal Authority concerned.
Contractor shall acquaint itself with conditions governing the delivery, receiving and
storage of materials at the work site if applicable to this work, as not to interfere with
University operations. Contractor shall not stop delay or interfere with University work
schedule without the prior approval of the University’s specified representative.
Contractor shall provide and maintain sufficient covering to protect stock and equipment
from the action of its work, if applicable.

10.25 Harmony: Contractor shall be entirely responsible for working in harmony with all others
on the work site when Contractor is working on University premises.

10.26 Warranty: Contractor warrants that material and/or scope furnished hereunder will be fit
for the purposes intended and will be free from defects in material and workmanship where
applicable.

10.27 Cost and Price Certification: The Contractor by submitting cost or price information
certifies that, to the best of its knowledge, the information submitted is accurate, complete, and
current as of a mutually determined specified date prior to the conclusion of any price
discussions or negotiations for: (1) A negotiated contract, if the total contract price is expected
to exceed $100,000, or a smaller amount set by the procurement officer; or (2) a change order
or contract modification expected to exceed $100,000, or smaller amount set by the
procurement officer.

The price under this contract and any change order or modification hereunder, including profit or
fee, shall be adjusted to exclude any significant price increases occurring because the
Contractor furnished cost or price information which, as of the date agreed upon between the
parties, was inaccurate, incomplete, or not current.

10.28. 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 the due account shall be taken of any adjustment of the specified completion
time(s) for completion of work as granted by approved change orders.

10.29. 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 final settlement of the
Contract, ascertain the facts and make adjustment for extending the completion date as in his
judgment the findings justify.
10.30. **Corporate Registration.** Pursuant to 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

10.31. **Performance Bond.** If required by the University, Contractor shall procure a performance bond. The University shall reimburse the Contractor for the actual cost of the bond up to the amount noted in Line ___ of the break out schedule in Contractor’s (Best and Final) Price Proposal.

10.32. **Drug and Alcohol Free Workplace.** The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace and that the Contractor shall remain in compliance throughout the term of the Contract.

10.33. **Contract Affidavit:** The attached Contract Affidavit must be executed by an authorized representative of the Contractor and is incorporated by reference into this Contract.

IN WITNESS WHEREOF, the parties, by their authorized representatives have executed this Contract.

UNIVERSITY OF MARYLAND
UNIVERSITY COLLEGE

By: ____________________________ By: ____________________________
Name: __________________________ Name: __________________________
Title: __________________________ Title: __________________________
Date: __________________________ Date: __________________________
EXHIBIT A
Compilation of Questions with Responses issued with Addenda to Solicitation
Exhibit C
Minority Business Enterprise Program Compliance
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _________________________________________________________

Address: _______________________________________________________

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

C. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned bidder or offeror certifies that, in accordance with State Finance & Procurement Article, §17-705:

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.

(2) The undersigned bidder or offeror is unable to make the above certification regarding its investment activities in Iran due to the following activities:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
D. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Proposal Affidavit dated ________, 2015, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: ________________  By: ____________________________________________________