University of Maryland University College

Solicitation 91420
for
Fair Labor Standards Act (FLSA) Review and Consulting Services

1. PURPOSE:

The University of Maryland University College (UMUC or the University) is soliciting proposals from qualified firms (the “Contractor”) to provide compliance assistance as it relates to the Fair Labor Standards Act (FLSA) for approximately 85 positions (the “Services”). The selected Contractor shall work with UMUC’s Compensation Unit to review and propose exemption status changes for adoption and implementation in order to be in compliance within the new FLSA regulations that shall go into effect on December 1, 2016. The Contractor must have a successful record of conducting exemption status studies and proposing exemption status recommendations.

2. TERM AND FEE:

The initial term of the Contract arising from this Solicitation shall commence on or around July 1, 2016, and conclude June 30, 2017. There will be three (3) one (1)-year renewal options at the sole discretion of UMUC. The maximum fee for the contracts shall not exceed $100,000.00. Total fees for any service shall not exceed the maximum fee.

3. SCOPE OF SERVICES:

The Contractor’s services shall include but is not limited:

- Lead in a collaborative engagement study with UMUC to review 85 identified exempt positions.
- Propose exemption status determinations based on the new FLSA regulations that shall go into effect on December 1, 2016, and duties test.
- Review the Fair Labor Standards Act (FLSA) exemption status of roles/positions under the new regulation.
- Provide recommendations and modifications, including detailed analysis and rationale of their findings, for the proposed regulation changes.

The work associated with the Services described in this Solicitation must be completed by August 1, 2016.
4. **RESPONSE REQUIREMENTS:**

Companies shall submit the following information.

4.1 **Company Profile:**

The name, address, telephone number, e-mail address and fax number of the Company and the name, title, address, telephone number, e-mail address and fax number of the Agency Representative.

4.2 **Qualifications:**

4.2.1 **Current Clients:** Company name, address, telephone number and contact name of the company’s three (3) current major clients, including the length of the relationship with each client and detailed description of the services provided/provided to the client. Company’s consulting team that worked for the client should also be provided.

UMUC reserves the right to contact these clients, or any other source available to it, including past performance with UMUC and/or the University System of Maryland, as a reference for the Agency.

4.2.2 **Approach/Capabilities of Lead Consultant:**

a. Provide information regarding the approach that the company will take and the tools to be utilized to perform the scope of services.

b. Provide a staffing plan as to how the company proposes to staff the engagement including, but not limited to, the qualifications of the proposed Lead Consultant (i.e. resume)

c. Provide a recommended schedule/level of effort for the engagement. The schedule/level of effort should be resource loaded so that UMUC can understand the anticipated level of effort for each member of the consulting team as well as the required level of effort of UMUC staff.

4.2.3 **Assumptions:** Provide any assumptions on which your firm’s proposal is based.

4.3 **Pricing:**

Provide a fixed fee for the engagement as well as fully loaded hourly rates for each person/job description on the proposed consulting team. There are no reimbursables under the resulting contract. The fee and the hourly billing rates are to include all costs, including domestic travel, for the engagement.
Note: UMUC will not pay in advance for any services. UMUC may consider progress payments as milestones are met and/or deliverables approved by UMUC.

UMUC may desire, but is not obligated to, retain the company for further work associated with the Services described in this Solicitation. In the event UMUC extends the services beyond the original scope, the awarded company will provide a quote based on a level of effort and the quoted hourly wages for the additional services.

5. ADDITIONAL SOLICITATION TERMS:

- A UMUC non-exclusive contract will be issued to the awarded vendor. By responding to this Solicitation, proposers are accepting that they will agree to execute the attached Agreement including mandatory Terms and Conditions for contract award. UMUC does not intend to substantially negotiate any of the terms and conditions, nor does it intend to accept any requested Consultant terms and conditions.
- As part of the attached Agreement, the awarded vendor shall be entering into a Non-Disclosure Agreement with UMUC for confidentiality and protection of UMUC’s intellectual property. (Refer to Sections 6 and 7 of the Agreement). All work product and documentation shall be regarded as a work for hire and is the property of University of Maryland University College and may not be copied or reproduced without its expressed written permission. UMUC will own all deliverables resulting from this engagement and must be able to use the deliverables UMUC deems in its best interest.
- UMUC reserves the right to terminate this Solicitation, in whole or in part, at its convenience.

6. SOLICITATION SCHEDULE:

<table>
<thead>
<tr>
<th>Issue Date:</th>
<th>May 27, 2016</th>
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<tbody>
<tr>
<td>Questions Regarding Solicitation Due:</td>
<td>June 3, 2016, by 4:00 P.M. EDT</td>
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<tr>
<td>Proposal Due:</td>
<td>June 13, 2016, by 4:00 P.M. EDT</td>
</tr>
<tr>
<td>Anticipated Contractor(s) Selection finalized:</td>
<td>By June 27, 2016 (Projected)</td>
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<tr>
<td>Contract Commencement:</td>
<td>By July 1, 2016 (Projected)</td>
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Proposals to this solicitation is to be provided electronically by June 13, 2016, to Beth Kirk at beth.kirk@umuc.edu.

Questions regarding this solicitation should be directed and provided in writing to Beth Kirk at beth.kirk@umuc.edu.
THIS CONTRACT #91420 (“Contract” or “Agreement”) is made this ___ day of July, 2016, between the University of Maryland University College, a constituent institution of the University System of Maryland (“USM”), an agency of the State of Maryland, with offices at 3501 University Boulevard East, Adelphi, Maryland 20783, hereinafter referred to as “UMUC” or “the University” and ____________, hereinafter referred to as “Consultant” or “Contractor” or “Vendor” with principal offices located at ________________________________ (collectively, “the Parties”).

RECITALS

The University issued solicitation documents (Solicitation 91420) on May ____, 2016, as amended from time to time (“the Solicitation”), for Fair Labor Standards Act (FLSA) review and consulting services. Contractor submitted proposal dated __________, and accepted by the University (collectively, “the Proposal”) in response to the Solicitation, and the University subsequently selected the Contractor as an awardee of this non-exclusive Contract.

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE, CONTRACT DOCUMENTS, AND TERM

1.1 Contractor shall provide professional Fair Labor Standards Act (FLSA) review and consulting services (“the Services” or “the Project”), as needed by UMUC’s Office of Human Resources, in accordance with the terms and conditions of this Contract.

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

   - This Contract Form (pages 1 through ___); and any Amendments;
   - The Solicitation #91420 and all amendments to the Solicitation;
   - Exhibit A: Contractor’s Proposal dated __________;
   - Attachment A: Contract Affidavit; and,  
   - 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).

1.3 The initial term of this Contract shall commence on or around July 1, 2016, and conclude June 30, 2017. There will be three (3) one (1)-year renewal options at the sole discretion of UMUC.
2. **PROFESSIONAL SERVICES**

2.1 The Contractor shall perform the Services as described in Exhibit A to this Agreement. Services shall be performed in accordance with the schedule included in Exhibit A, or, if no such schedule is included, in accordance with a schedule agreed upon in writing by the Parties at a future date and adopted as an amendment to Exhibit A. The Contractor shall perform the Services as expeditiously as is consistent with good professional skill and care and the orderly progress of the Contract.

2.2 The UMUC Office of Human Resources will designate a staff member to act as coordinator (“Project Coordinator”) between UMUC and the Contractor. Throughout the period of the Contract, 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.

2.3 The consulting team for the Contract shall be the same person/people 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.

2.4 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 The aggregate maximum fee for all Contracts resulting from Solicitation #91420 cannot exceed $100,000. The total fees for services required to complete required services shall not exceed the maximum fee.

3.2 The Contractor’s fees shall not exceed fees set forth in the Contract per the Contractor’s proposal, attached hereto as Exhibit A of this contract. There is no guarantee of a dollar amount of work under this Contract.
3.3 As compensation for satisfactory performance of Services, 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.

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 accounts payable@umuc.edu.

Contractor may also send the invoices to the UMUC Office of Human Resources. The University’s current Purchase Order number, issued for accounting purposes only, must be noted on all invoices.

Invoices shall be presented at the beginning of each month covering service during the previous month. The Consultant shall furnish each invoice with the Purchase Order or Contract number clearly indicated. No invoice will be processed if there is a dispute between UMUC and the Consultant as to the current or cumulative services provided.

UMUC's approval of periodic payments to the Consultant shall not constitute, in any sense, approval or acceptance by UMUC of the Service work performed through the date of the invoice or of the Consultant's assertion of percentage of the Service work completed through the date of the invoice. Consultant may be paid as milestones are met. The final payment will be made upon full acceptance by UMUC of satisfactory completion of the Services.

(If applicable, the payment schedule will be listed here.)

When required by UMUC to substantiate the degree of completion claimed in any application for periodic payments, the Consultant shall furnish UMUC with copies of the documents evidencing the degree of completion claimed.

3.4 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.

3.5 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 tasks required by the University and other tasks and duties set forth in the request(s) for Services.

4.2 Contractor and UMUC intend this Contract to be a contract for services and each considers the Work to be a work made for hire. If, for any reason, the Work would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to UMUC, its successors, and 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.

4.3 Contractor agrees to execute all tasks and to perform such other proper acts as UMUC may deem necessary to secure for UMUC the rights in the Work.

5. **EVALUATION AND ACCEPTANCE PROCEDURE**

5.1 Upon completion and delivery of service by Contractor, UMUC will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Payments, in accordance with Section 3 of this Contract will be based on the completion of requests by Contractor and acceptance by UMUC of each review/report.

5.2 Within the time period specified in the Contract including any Contract Amendments, or work order(s) UMUC shall determine whether Contractor’s services materially conforms to the specifications defined in the Contract and/or work order(s). As used herein, the term "materially conforms" means that the Service is ready to be used and meets or exceeds UMUC’s specifications. If the Service materially conforms to the specifications, then, UMUC will provide confirmation to Contractor that the Service is accepted.

5.3 If the Service does not materially conform, UMUC shall immediately inform the Contractor of the deficiencies. Contractor, at no additional cost to UMUC, shall thereafter make all appropriate and necessary fixes to the Service within the time period specified by UMUC. If the Service again fails to materially conform, then, this same process will be repeated one more time. If the Service fails to materially conform to the specifications after delivery for the second time, then, UMUC may, at its sole discretion, (a) further extend the timeframe for cure, (b) cancel the work order and c) begin the termination process as defined in Section 11.1 of this Contract. If UMUC does not elect to terminate this Contract after the
second failure, it has not automatically waived its right to do so following any additional failed attempt at correction by Contractor to which the Parties may agree.

5.4 If the Contractor fails to meet the Services required at any other periods of time as mutually agreed to, UMUC may declare the Contract in material breach and begin the termination process as defined in Section 11.1 of this Contract.

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 services under this Contract.

7. CONFIDENTIAL INFORMATION

7.1 Contractor acknowledges and understands that in connection with this Contract, the performance of the Services and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given UMUC’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 Services, 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 to, permit access to, or allow use of Confidential Information by 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 Bliley Act (“GLBA”), or the Maryland Public Information Act.
(“PIA”) including regulations promulgated thereunder, 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 re-disclosure 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 7 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 UMUC 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 UMUC or destroyed upon completion or termination of this Contract.

8. **SOFTWARE AND SECURITY**

8.1 Contractor shall endorse UMUC’s requirement to adhere to the University System of Maryland ("USM's") IT Security Standards (http://www.usmd.edu/usm/adminfinance/itcc/ITSecResource.html). UMUC is required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities include:

- Identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations, and licenses at the termination of the contract.
- Assessment of the contractor’s security and privacy controls.
- Inclusion of UMUC’s security and privacy requirements in the agreement.
- Periodic reassessment of contractor services provisioned to ensure all contract obligations are being met and to manage and mitigate risk.

8.2 The Contractor is the owner or authorized user of the Contractor’s software and all of its components, and Contractor software and all of its components, to the best of Contractor’s knowledge, do not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.

8.3 Contractor shall (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services. Contractor software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.

8.4 Report any confirmed or suspected breach of University data to UMUC’s Computer Incident Response Team ("CIRT") within one (1) hour of discovery or detection. Any confirmed or suspected computer security incidents not resulting in breach of University data shall be reported to UMUC CIRT within 12 hours of discovery or detection.
8.5 Follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.

8.6 Configure and maintain network to be suitably hardened against security threats and ensure adequate performance.

8.7 On an annual basis, Contractor shall obtain Service Organization Control (SOC) 2 report (“the Report”) for all facilities from which the Services are provided. It is the Contractor’s responsibility that such Report are provided under the terms and conditions of this Contract without the University being required to agree to additional terms and conditions that may be applied by a third-party. If the Report states that a facility has failed to materially satisfy one or more control objectives, Contractor will, as UMUC’s sole remedy, use commercially reasonable efforts to cause the facility to materially satisfy all control objectives. If, despite Contractor’s efforts, the facility cannot materially satisfy all relevant control objectives, Contractor will mitigate the issue in a commercially reasonable manner which may include the migration to an alternate facility which materially satisfies all control objectives. Failure to do so may be considered a material breach of this Agreement in the sole and reasonable discretion of UMUC.

8.8 UMUC or an appointed audit firm (Auditors) has the right to audit Contractor and its sub-vendors or affiliates that provide a service for the processing, transport or storage of UMUC data. Audits will be at UMUC’s sole expense which includes operational charges by Contractor, except where the audit reveals material noncompliance with contract specifications, in which case the cost, inclusive of operational charges by Contractor, will be borne by the Contractor. In lieu of UMUC or its appointed audit firm performing their own audit, if Contractor has an external audit firm that performs a review, UMUC has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified report for testing the controls that have an impact on its data.

8.9 UMUC shall have sixty (60) days after the expiration or termination date of this agreement to retrieve and download data and content. The Contractor shall make available to UMUC a complete and secure (i.e., encrypted and appropriately authenticated) download file of customer data, sales, and product information in .xml format including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Contractor further warrants that all data and content pertaining to UMUC’s buying programs is solely owned by UMUC and shall not be transferred or disclosed to any Parties without the written consent from UMUC.
9. RELATIONSHIP OF THE PARTIES

9.1 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. Nothing in this Contract is intended to create a joint employment relationship.

The Consultant affirms that Consultant and members of the Consultant’s professional team providing services under this Agreement (“Consulting Team”) are not Maryland State employees. If Consultant or any member of the Consulting Team is a former state employee who retired under SB1 of 1996, Consultant affirms that established protocol has been followed, including receipt of approval from the Board of Public Works that the retired state employee may provide services under this Agreement.

9.2 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, UMUC 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 UMUC, 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 Services by way of them.

9.3 Each Party reserves the right to review all press releases or other public communications of the other Party that may affect the Party’s public image, programs or operations.

9.4 This Agreement is non-exclusive. UMUC reserves the right to arrange for the Services provided hereunder from any other Party.

10. DISTRIBUTION OF RISK

10.1 Contractor shall maintain in full force and effect adequate insurance coverage to protect against the risks associated with the performance of Services under this Contract. Contractor shall also maintain in full force and effect workers’ compensation insurance as required by the laws of the jurisdiction where the Services are performed. Upon request, Contractor shall provide the University with evidence of such insurance.

10.2 Contractor shall indemnify and hold harmless UMUC and the State of Maryland, their officers, employees, and agents, from any and all costs (including, without limitation, reasonable attorneys’ costs and cost of suit), liabilities, claims, or demands arising out of or related to Contractor’s performance under this Contract.
UMUC agrees to notify Contractor promptly of any known liabilities, claims, or demands against UMUC for which Contractor is responsible hereunder, and Contractor agrees to, at UMUC’s request, defend UMUC or settle any such liabilities, claims, or demands.

10.3 Neither Party shall be liable to the other for indirect, consequential, incidental, punitive, exemplary, nor special damages, or losses including, without limitation, lost profits and opportunity costs.

11. GENERAL TERMS AND CONDITIONS

11.1 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, UMUC may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. UMUC 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 UMUC is entitled pursuant to this Contract shall become the University’s property. UMUC 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 UMUC 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.

11.2 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.

11.3 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 UMUC, 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.

11.4 **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.

11.5 **Subcontracting and Assignment.**

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

11.5.2 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 UMUC. 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.

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

11.7 **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.
11.8 **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.

11.9 **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  
Procurement Department  
Attn: Procurement Officer  
3501 University Boulevard East  
Adelphi, MD 20783-8044

For the Contractor:

__________________________________  
__________________________________  
__________________________________  
__________________________________

11.10 **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.

11.11 **Retention of Records.** Contractor shall retain and maintain all records and documents relating to this Contract for five (5) 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 and at no cost to UMUC. These documents may include, but are not limited to, correspondence, the original signed consent form, background search results, W2s, paystubs, employment verification documents, and official transcripts.

11.12 **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.

11.13 **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.

11.14 **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.

11.15 **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.

11.16 **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.

11.17 **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.

11.18 **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.

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

11.19.1 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;
11.19.2 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;

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

11.19.4 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.

11.20 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.

11.21 MultiYear 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 nonrecurring 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.

11.22 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.

11.23 Insurance.

11.23.1 The Contractor shall secure, and shall require that subcontractors secure, pay the premiums for and keep in force until the expiration of this contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this Contract, inclusive of the requirements in the solicitation documents:
Commercial General Liability Insurance including all extensions-
  Not less than $1,000,000 each occurrence;
  Not less than $1,000,000 personal injury;
  Not less than $2,000,000 products/completed operations aggregate; and
  Not less than $2,000,000 general aggregate.

Workers’ compensation per statutory requirements.

Fiduciary Bonding of Workers with access to cash and/or credit card information.

11.23.2 The Contractor shall provide to the Procurement Officer a certificate of insurance
including evidence of the required limits at the execution hereof, and annually
thereafter. All insurance certificates provided to the University for general
and/or excess liability protection, bodily injury or property damage and fiduciary
Bonding must specifically name on its face the University as an additional insured
as respects to operations under the contract and premises occupied by the
Contractor provided, however, with respect to the Contractor’s liability for bodily
injury or property damages above, such insurance shall cover and not exclude
Contractor’s liability for injury to the property of the University and to the
persons or property of employees, students, faculty members, agents, officers,
regents, invitees or guests of the University.

11.23.3 Notices of policy changes shall be furnished to the Procurement Officer. All
required insurance coverages must be acquired from insurers allowed to do
business in the State of Maryland. The insurers must have a policy holder’s rating
of “A-“or better.

11.24 Monthly/Weekly Progress Report and Schedules (if applicable)

The Consultant shall file with the Project Coordinator a monthly and/or weekly
(as applicable) progress report and schedule for the Project. One copy shall be
sent to the Project Coordinator in sufficient time to be received no later than the
tenth day of the month or as determined by UMUC, immediately following the
end of the month/week covered by the report.

Each report shall include a summary of accomplishment during the past
month/week, a projection of work to be accomplished during the month/week the
report is filed, and a long-range projection of work to be accomplished during
the next three months or one week, as applicable and determined by UMUC. Any
information requirements from UMUC and the dates such information is
necessary in order to maintain the schedule shall be specifically identified in these
reports.

A monthly/weekly report and schedule shall be submitted until the Project is
completed.
The schedule shall clearly show (under "Remarks") the reason(s) for any delay(s) such as Project clarification or revision, delay in receipt of UMUC information or approvals, etc., and shall include the dates that each delay started and ended.

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

UNIVERSITY OF MARYLAND
UNIVERSITY COLLEGE

By: ________________________
Name: ______________________
Title: ______________________
Date: ______________________

By: ________________________
Name: ______________________
Title: ______________________
Date: ______________________
EXHIBIT A

THIS Exhibit A to CONTRACT ("Contract") ___________ is made as of this _____ day of ____________, 201__ 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."
CONTRACT AFFIDAVIT

(This affidavit is a mandatory contract addendum in accordance with USM Procurement Policies and Procedures, but it is only required from the successful Contractor.)

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title)________________________ SAMPLE _______________________________ 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:

________________________________________________________________________

________________________________________________________________________

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Proposal Affidavit dated __, 20__, 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: ________________________________