



# MARYLAND EDUCATIONAL ENTERPRISE CONSORTIUM (MEEC)

## REQUEST FOR PROPOSAL # 90936 LEARNING MANAGEMENT SYSTEM(S) [LMS] AND ASSOCIATED IMPLEMENTATION SERVICES

ISSUE DATE: May 17, 2011

**ISSUING OFFICE:** UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE  
3501 University Boulevard East, Suite 3120  
Adelphi, Maryland 20783  
301-985-7895  
[www.umuc.edu/procurement](http://www.umuc.edu/procurement)

SIGNIFICANT MILESTONES	TIME:	DATE
Pre-Proposal Meeting	not applicable	not applicable
Deadline for Questions	5:00 PM	June 10, 2011
Technical Proposal Due	4:00 PM	June 20, 2011
Oral Presentations/Demonstrations (Optional at MEEC's discretion; if held, only shortlisted firms will be invited)	TBD	July 20 and/or July 21, 2011
Price Proposal Due Date (from second shortlisted firms only)	4:00 PM	July 29, 2011

**WARNING:** Prospective proposers who have received this document from a source other than the Issuing Office should immediately contact the Issuing Office and provide their name and mailing address in order that amendments to the Request for Proposal or other communications can be sent to them. Any Prospective Proposer who fails to notify the Issuing Office with this information assumes complete responsibility in the event that they do not receive communications from the Issuing Office prior to the closing date.

**MEEC**  
**LEARNING MANAGEMENT SYSTEMS**  
**RFP #90936**

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**SECTION I:  
GENERAL INFORMATION**

**REQUEST FOR PROPOSALS  
FOR  
MECC LEARNING MANAGEMENT SYSTEMS**

**SECTION I:  
GENERAL INFORMATION**

**1. Summary:**

1.1 **Objective.** The Maryland Educational Enterprise Consortium (“MEEC”), a non-profit consortium of the University System of Maryland (“USM” or “University”), is soliciting proposals from providers (referred to as “Providers”, “Proposers”, and/or “Offerors”) of learning management system products and associated implementation and consulting services. It is MEEC’s intent to award to multiple Providers (also referred to as “Contractors”) for a variety of Learning Management System (LMS) products and LMS related services to serve MEEC’s constituents. The resulting Contracts will be “master” agreements under which task orders detailing specific needs will be performed (Refer to Section II for further information.)

The selected Provider(s) will work with the buying MEEC member in a variety of tasks associated with LMS, such as, but not limited to, purchase of an LMS license(s), and optionally, hosting services; consulting and planning for LMS related activities that may arise for a MEEC member; the selection of an appropriate learning management system; conducting, or assisting the buying MEEC member, in pilot programs and/or proof of concept of LMS’s; managing and staffing the implementation of LMS’, migration from one LMS system to another; etc. As well, MEEC members may purchase basic LMS packages and add other components or enhancements later at the contract unit prices (or discount from educational retail list).

MEEC may add other institutions and/or applications and services related to LMS during the term of the contract(s). The Provider(s) must have a successful record of assisting organizations achieve their LMS goals and objectives. MEEC is looking for strategic partner(s)—sophisticated, highly integrated full-service Contractor(s) with strong expertise and a proven, results-oriented background in learning management systems products and related services. During the term of the contract, it is expected that the Provider(s) of LMS be able to adapt and grow in its LMS products and related service offerings with minimal or no additional cost as new technology and products are added to the education environment. It is highly desirable that the Provider(s) has its primary geographical location(s) in the United States as well as brings an economic benefit to the State of Maryland.

1.2 **Background.** MEEC is an initiative of the University System of Maryland, uniting with K-20 education partners (MEEC is made up of K-20 Public and Private Education, libraries, museums and teaching hospitals) in Maryland to provide quality information technology opportunities at affordable prices. The MEEC web page may be viewed at [www.meec-edu.org](http://www.meec-edu.org). Current MEEC initiatives include but are not limited to enterprise software license agreements for Apple, Microsoft and Anti-Virus software as well as computing hardware. The Microsoft enterprise agreement licenses over 215 (180 educational entities) Maryland schools and education entities, higher education and K-12, both public and private. MEEC also has master contractors to provide Help Desk and Call Center Services.

**Only members of MEEC in good standing are permitted to purchase from the MEEC Agreements.** All Maryland entities defined as “education eligible” are permitted to be members of MEEC. The list of current MEEC members is on the website as well as the criteria for “education eligible”. This list of members is subject to change throughout the life of the resulting contract(s).

1.3. Procurement of the LMS Contractor(s) (also referred to as “Offerors”, “Proposers”, and/or “Providers”) will be conducted in accordance with this solicitation document. (See Section 3 for further details).

1.4 Upon selection of the LMS Contractor(s) and receipt of applicable approvals, a non-exclusive MEEC Master Agreement will be fully executed with the successful firm(s). Multiple awards are anticipated. All Proposers are advised that MEEC and the University makes **no guarantee** that any task orders will be issued under the resulting Master Agreements.

Awards made as a result of this RFP will not be exclusive contracts. Participation in these and all MEEC contracts is voluntary. Projected LMS expenditures and/or usage by prospective MEEC members do not commit those institutions to purchase at the projected level, nor to use resulting contracts as a purchasing vehicle. However, it is the University’s and MEEC’s anticipation that the majority of the eligible institutions will elect to utilize the resulting LMS Master Agreement(s). Refer to Section II regarding the procedure(s) that a MEEC member will follow to utilize the resulting Master Agreements.

1.5 MEEC anticipates the award by late October, 2011 with Master Agreements(s) in place with the successful Proposer(s) by mid-November, 2011. As a result, it is anticipated the MEEC members will begin utilizing the contracts in December/ 2011/January 2012 for LMS purchases for implementation. The Master Agreements will be aligned to MEEC’s fiscal year, July 1 through June 30, so the initial term of the Master Agreements will be from date of award/full execution of the contracts through June 30, 2017.

## **2. Issuing Office:**

2.1. The Issuing Office on behalf of MEEC is:

University of Maryland University College  
Office of the COO and CFO  
3501 University Blvd East, Suite 3120  
Adelphi, MD 20740

Attn: Valerie Rolandelli  
Assistant Vice President for Strategic Contracting  
(301) 985-7895  
E-mail: [vrolandelli@umuc.edu](mailto:vrolandelli@umuc.edu)

Or

Vera Jones, Coordinator for Strategic Contracting  
301-985-7006; [vjones@umuc.edu](mailto:vjones@umuc.edu)

2.2 The Issuing Office shall be the **sole** point of contact for purposes of the preparation and submittal of proposals in response to this solicitation.

### **3. Questions and Inquiries:**

All questions and inquiries regarding this procurement are to be directed to the individuals referenced with the Issuing Office above. All such questions and inquiries must be received by close of business on Friday, June 10, 2011. It is preferable that questions be submitted via e-mail to **both** [vrolandelli@umuc.edu](mailto:vrolandelli@umuc.edu) and [vjones@umuc.edu](mailto:vjones@umuc.edu) . Inquiries will receive a written reply. Copies of replies will be sent to all other Proposers, but without identification of the inquirer.

### **4. Pre-Proposal Conference.**

A Pre-Proposal Conference will not be held in conjunction with this procurement.

### **5. Addenda Acknowledgment.**

Prospective offer(s) responding to this RFP must acknowledge the receipt of any, and all, addenda, amendments and/or changes issued. Receipt of the addenda, amendments and/or change issued must be acknowledged in writing by proposers and included in the technical proposal.

### **6. Proposal Closing Date/Due Date and Time**

6.1. **An original plus two (2) hard copies (for a total of 3) and seven (7) CD's or flash drives of the Technical Proposal must arrive at the Issuing Office by Monday, June 20, 2011 on or before 4:00 p.m. EDT** in order to be considered. Proposers are requested to clearly mark the "original" set of the Technical Proposal. The original hard copy of the Technical Proposal will be considered the official submittal by the Proposer. No pricing information is to be included in the Technical Proposal.

6.2. Price Proposals are not requested at this time. Only those Proposers whose proposal is shortlisted at the conclusion of the technical evaluation will be requested via addendum to provide a Price Proposal. It is anticipated that Price Proposals will be requested to be provided on or about 4:00 pm, Friday, July 29, 2011. One original and one (1) copy (for a total of 2) of the Price Proposal must arrive at the Issuing Office by the established due date and time. (See Appendix B for a sample of the Price Proposal form.) Shortlisted Proposers will be asked to clearly mark the "original" set of the Price Proposal.

6.3. Proposers mailing proposals shall allow sufficient mail delivery time to insure timely receipt by the Issuing Office. Proposals or unsolicited amendments to proposals arriving after the due date and time will not be considered.

6.4. **LATE PROPOSALS CANNOT BE ACCEPTED.** Proposals are to be delivered to the University's Office of the COO and CFO, University of Maryland University College, Inn and Conference Center (ICC), 3501 University Blvd East, Suite ICC-3120, Adelphi, MD 20783-8044. Suite 3120 is located on the executive floor of the University and is accessible only via public elevator at the far end of the main concourse of the ICC. (Do **not** take the elevators by the Starbucks Café.) The University recommends against use of mail or delivery services which will

not guarantee delivery directly to Room ICC-3120. Proposals delivered to the campus central mail facility or to locations other than Room ICC-3120 will not be considered "received" by the University's Issuing Office until they arrive at Room ICC-3120 and are clocked in. The University will not waive delay in delivery resulting from need to transport a proposal from another campus location, or error or delay on the part of the carrier. Directions to UMUC can be found at the website [http://www.umuc.edu/gen/adelphi\\_building.shtml](http://www.umuc.edu/gen/adelphi_building.shtml). **If you are unfamiliar with the location of UMUC and/or Room ICC-3120 within the Inn and Conference Center and plan to hand deliver your proposal, it is strongly recommended that you take a trial run prior to the due date and time for proposals.**

## **7. Minority Business Enterprises.**

Minority participation is important to UMUC and the State of Maryland. All state entities have a subcontracting goal of 25% of its expenditures with State Certified Minority Business Enterprises (MBE's). State-certified Minority Business Enterprises (MBE) are strongly encouraged to respond to this solicitation notice. If not certified by the Maryland Department of Transportation (MDOT), MBEs are encouraged to initiate certification as soon as possible. For more information on the State's MBE program or questions related to certification, please contact MDOT's Office of Minority Business Enterprise/Equal Opportunity, telephone 800-544-6056 or view the MDOT website <http://www.mdot.state.md.us/mbe/index.html>. Refer to Appendix E for further information. The forms in this Appendix may be required to be submitted with subsequent task order proposals requested under the Master Agreements.

There is no MBE goal set for this Master Agreement procurement, but Proposers are encouraged to voluntarily propose and commit to such participation. As well, a buying MEEC member may establish a MBE goal as part of the task order request for proposal process (TORP).

## **8. Contractual Agreement.**

The Contract to be entered into as a result of this RFP (the "Master Agreement" or "Agreement") shall be by and between the proposer as Contractor and MEEC in the form of a MEEC/University Master Agreement and shall contain the mandatory provisions included herein in Appendix C as well as any additional terms required by MEEC, the University or the State of Maryland. By submitting an offer, the Contractor warrants that they have reviewed Appendix C and will execute a contract a) in substantially the same form and b) with these mandatory terms and conditions upon request by MEEC/USM.

The terms and conditions of the Master Agreement shall apply to all subsequent task order, unless, the buying MEEC member, at its sole discretion, allows negotiation of terms and conditions in the Master Agreement for a specific task order. The awarded Master Contractors should not assume that any term and condition of the Master Agreement is negotiable at the task order level.

Subsequent to the signing of the Master Agreement, the buying MEEC member may also require the signing of a Task Order Contract or Agreement (TOC or TOA) that is specific to the LMS product and/or related services to be provided by the Contractor for the buying MEEC member as well as contain specific mandatory terms and conditions applicable to the specific task order scope of work and/or to the specific buying MEEC Member's institutional requirements.

For accounting purposes only, the buying MEEC member may also issue a purchase order to the awarded firm.

**9. Term of Contract.**

Any contract arising from this RFP action shall commence on the date the contract is executed on behalf of MEEC/the University, or such other date as MEEC/the University and the Contractor shall agree. The term of the Agreement will be for the scope of work as defined in Section II of the solicitation documents.

The Agreement is anticipated to commence in mid-November, 2011 and will be for a period of approximately five (5) years and eight (8) months (i.e. through June 30, 2017). At the end of each fiscal year (July 1 through June 30) of the initial term (beginning with June 30, 2012), MEEC/the University, at its sole option and with sixty (60) days notice to the Contractor, may elect to discontinue the Master Agreement with no further obligations to the Contractor and with no penalty. As well, the buying MEEC member may elect, at its sole option, and with sixty (60) days notice, discontinue any task order done under a Master Agreement. If MEEC/the University elects to discontinue the Master Agreement or a Task Order Contract, a summation of work in progress will be made and a mutual agreement as to how to finalize this work in progress will be made. The finalization of the work may include allowing sufficient time for the buying MEEC member to transition to a new LMS.

Upon completion of the initial term, MEEC/the University may, at its sole option, elect to renew the Master Agreement(s) for a period, or periods, not to exceed five (5) additional years. At the end of each year of the renewal term, MEEC/the University, at its sole option and with sixty (60) days notice to the Contractor, may elect to discontinue the Master Agreement with no further obligations to the Contractor and with no penalty. As well, the buying MEEC member may elect, at its sole option, and with sixty (60) days notice, discontinue any task order done under a Master Agreement.

Any task order that commences during a term(s) of the Master Agreements may be completed under the Master Agreement terms and conditions and/or the Task Order Contract terms and conditions, even if the completion date of the Task Order is subsequent to the termination and/or expiration of the Master Agreement

**10. Acceptance of Terms and Conditions.**

By submitting an offer in response to this RFP, an Offeror shall be deemed to have accepted all the terms, conditions, and requirements set forth in this RFP. The RFP including all addenda in total shall be incorporated into the contract by reference.

**11. Proposal and Contract Security** – Not applicable to this procurement, but may, at the sole discretion of the buying MEEC member, be applicable to individual task orders provided under the resulting Contract(s).

**12. Confidentiality of MEEC/University Information**

The selected Contractor may have access to, may obtain, or be given confidential information, including without limitation information concerning the University's/MEEC's business strategies, political and legislative affairs, students, faculty, employees, vendors, contractors, customer lists, finances, properties, methods of operation, computer and telecommunication systems, and software and documentation. Certain confidential information may be protected



under the Family Educational Rights and Privacy Act (“FERPA”), the Gramm-Leach-Bliley Act, and the Maryland Public Information Act. The selected firm must have administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the MEEC/University member’s confidential information.

At its sole option, MEEC/the University may elect to conduct discussions with one or more Offerors in order to evaluate their abilities and responsiveness to the RFP. If such discussions are held, in order to facilitate the discussions and to allow Offeror to propose responsive solutions to MEEC/the University’s needs and requirements, MEEC is willing to disclose certain confidential information to Offeror, including without limitation information concerning MEEC’s business strategies, political and legislative affairs, students, employees, vendors, contractors, customer lists, finances, properties, methods of operation, computer and telecommunications systems, and software and documentation (“Confidential Information”). By submitting a proposal in response to this RFP, Offerors agree: (i) to use Confidential Information solely for purposes of responding to and discussing the RFP; and (ii) not to disclose, permit or cause use of, or provide access to Confidential Information to any third person or entity. Upon request by MEEC/the University, Offerors may be required to sign a Non-Disclosure Agreement.

END OF SECTION I

## SECTION II

### OVERVIEW/BUSINESS NEED/USE OF RESULTING AGREEMENTS

## SECTION II

### OVERVIEW/BUSINESS NEED/USE OF RESULTING AGREEMENTS

**1.1** MEEC/USM is currently seeking Proposals for a wide range of Learning Management Systems (LMS) (both hosted and non-hosted) products and related services for its members-in-good-standing. Such LMS products may include, but are not limited to, 1) hosted solutions; 2) non-hosted solutions; 3) open/community-source systems; 4) proprietary systems; 5) “niche” LMS related market systems. MEEC members may elect to purchase basic LMS packages and add components later at the Master Agreement unit prices or discounts from educational list price, whichever is applicable.

#### **1.2. Objective**

The objective of this process is to find providers of LMS that will become partners with the buying MEEC member in providing exceptional LMS products and related services to support online learning for the MEEC member’s users (faculty, staff, students, parents, guests, contractors, and other agents of the MEEC institution). In addition to providing actual products, some MEEC members may also want the selected Contractor(s) to assist in planning and consulting for a variety of LMS related projects, such as initial implementation & integration, online testing, homework assistance, etc. The resulting Agreements may also be used for pilot programs and/or proof of concepts as part of a MEEC member’s evaluation and assessment of LMS products, with no obligation to purchase or continue use of the LMS. MEEC members may also request one or more of the selected Contractor(s) to review the MEEC member’s current LMS policies and procedures, processes, and organization and provide recommendations for enhancements, revisions, etc. to provide better LMS products and related services to the MEEC member’s end-users. MEEC’s objective is for the relationship with the selected Master Contractors is to be that of a strategic partner or partners that work(s) together with the buying MEEC member to improve efficiencies and quality of LMS offerings to the member’s educational community of students, faculty, staff, and parents.

#### **1.3 Statement of Needs**

LMS are needed that will allow any buying MEEC member in good standing to purchase a license. These LMS provide the software platform for providing online course content to students in an efficient and cost effective manner. The LMS should be easy to use by faculty, students, administrators, and parents on a variety of technical and networkable accessible devices, such as, but not limited to, desktop computers, laptops, notebooks, tablets and other hand held devices, mobile devices, etc. The LMS should be capable of integration with existing enterprise resource planning (ERP) or student information systems (SIS) existing at the institutions, for the purposes of creating classes, managing instructor assignments, and managing student enrollments and grades. In hosted solutions, the vendor must be able to provide helpdesk support for LMS users (in some cases 24/7/365 may be required.)

MEEC invites both open source and proprietary vendors to respond to this solicitation.

Features and functionalities that may be required by a buying MEEC member include, but are not to be limited to:

- Content management capabilities
- Course copy from previous versions or other LMS system(s)
- Course syllabus display and editing
- Support for foreign language; UTF8 Compliance (Foreign languages will be defined by the buying MEEC member for a specific task order)
- Notation input and display specific disciplines such as scientific, math, music
- Interface with third party content creation tools
- Views for instructors, students, administrators, and parents
- Allow for flexible/programmable and multiple roles at course and systems levels
- Internal messaging for synchronous and asynchronous
- Discussion boards
- Wiki or wiki-like tool
- Blog tool for course, individual, and journaling
- Functionality to write private user notes, both for instructor and students, in specific areas of the course such as content display and assignments
- Real-time chat/instant messaging
- Open APIs for addition of third-party and home-grown tools, systems, and integrations
- Whiteboard
- Bookmarks
- Video/Audio Functions (In some cases, hosting of video and audio content may be required/desirable.)
- Orientation for use/help resources
- Search capabilities
- Work offline/synchronize
- Group work/ collaboration space
- Assessments and quizzes
- Student community building (clubs, study groups, interest groups)
- Student portfolios
- Course management
- Online grading tools or grade book that allows for score grades, letter grades and qualitative comments; in addition, capability for computing automatically overall scores and translating scores to letter grades
- Student tracking
- Automated testing and scoring
- Course template functionality
- Curriculum management
- Customizable for MEEC member
- Instructional design Tools
- Content sharing/Reuse
- Student authentication/Instructor authentication
- Active Directory authentication
- Course authorization and access via pre-defined roles
- Integration with other institution systems (ERP, HR, etc.)
- Migration/Support/Training

- Version control and/or migration
- Meeting standards such as Section 508 of US Rehabilitation Act, SCORM, Common Cartridge, IMS Enterprise, FERPA, etc.
- Ability to support electronic data interchange with other enterprise systems including, but not limited to student information systems, human resource systems, assessment systems, etc.
- Ability to integrate materials from third party course content providers
- Ability to record and publish instructor's lectures either native to the LMS or through existing integration with third party software.

1.4 The USM/MEEC and its constituent institutions, given the current emphasis on electronic delivery of both instruction and services, are mindful of the need to provide accommodation for all faculty, staff, students and citizens who are visually impaired. Electronic communication by its nature is visual and thus constitutes a serious service issue for those who do not have or have only limited visual capabilities. To this end, the following reflects University System of Maryland Procurement policy for the acquisition of IT products and services. These products and services include hardware, software, web services, instructional and administrative services for internal use and for external communication to constituents.

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

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

If non visual access technology is not available from any qualified vendor and/or if the total cost to adapt non visual technology exceeds 5% additional, the above requirements will not apply.

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

- b) In addition to the above, it is highly desirable that given the importance of web access in the daily business of the University/MEEC, bidders or offerors of web based services software should state whether they have been awarded "Nonvisual Accessibility Certification" from the National Federation of the Blind and present evidence of that award.

If Nonvisual Accessibility Certification has not been applied for or applied for and not yet granted, bidders or offerors should demonstrate how their product meets the criteria utilized by the National

Federation of the Blind in granting that certification. Criteria can be found at <http://www.nfb.org/seal/criteria.htm>

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Below is an extract from the National Federation of the Blind site noted above:

- Links — Sufficient information is provided for the user to determine the purpose of the link (e.g., link text can be read by the screen access software to tell the user what the link will do).
- Tables — Table headings are consistent on data tables, and screen access software table navigation functions are able to present tabular information in a meaningful way.
- Charts — Screen access software can extract meaningful information from charts (e.g., a text description of information conveyed via a pie chart is easily available).
- Frames — Each frame has a title that can be read by screen access software, and that title conveys useful information about the function of the frame (e.g., frame titles do not simply give the location of the frame on the page but describe the purpose of the frame).
- Edit Boxes — A clear descriptor of each edit box is available to screen access software (e.g., when the user tabs to an edit box, the screen access software might say, "first name edit," or "last name edit," as opposed to "edit").
- Check Boxes and Radio Buttons — Text information about the purpose of checkboxes and radio buttons is easily available to screen access software, enabling the blind computer user to know what is being checked or unchecked.
- Push Buttons — The purpose of the button is identified, and the user can determine the action to be executed when the button is pressed. All buttons that can be seen on the page are detectable with screen access software.
- Select Menus (Combo Boxes) — The menu options can be navigated with screen access software without causing form submission or a screen change. Single and multiple selections can be made and the selections can be reviewed.
- Non-Standard Controls (elements used in a page that perform nontraditional behavior) — Such controls can be executed with screen access software, and the user is provided with enough information to make good use of the control (e.g., a hypertext link, which traditionally takes one to a different page, is now used to select or highlight an item on the page; with screen access software, the user is able to determine which item on the page has been highlighted).
- Device Dependency — All actions that provide material function must be executable from the keyboard (e.g., there must be keyboard accessible equivalents to JavaScript actions triggered only through the use of the mouse when those actions are material to the page).
- Image Maps — Selections can be identified by the screen access program (e.g., there is text available in a logical order to screen access software for the user to understand and select items on the image map). If certain selections cannot be made accessible, an alternative must be provided (e.g., a properly labeled hypertext link).

- Pictures and Graphics — Those that convey important information central to the function of the site or application are described using text that is easily available to screen access software. The user should be able to understand the meaning of the graphic or picture (e.g., a logo for a company is labeled "logo for XYZ Co.").
- Animation — Methods for an alternative to the animation are available and easily accessible to screen access software (e.g., a presentation that shows via animation how a product works is accompanied by a text equivalent that can be reached by pressing <Enter> on a link).
- Client Side Content Changes (Changes occurring on a Web page without a round trip to the server) — All such changes are detectable by screen access software.
- Repetitive Link Skipping — A function that allows users to skip past repetitive navigation links and standard navigation features is available and usable with screen access software. This function allows a user to quickly access the meat of the page without having to listen to numerous redundant links.
- Forced Focus Changes (content on the screen changing without a specific command from the user) — Such changes can be easily turned off by a user running screen access software.
- External File Types — All material information provided through an external file type is accessible to screen access software or an alternative accessible version is provided. Examples of external file types include the Portable Document Format (PDF) from Adobe Systems and Flash presentations from Macromedia.
- Inline Interfaces — Interface elements within Windows applications (e.g., the controls used within an audio playback program that is functioning as a plug-in) are accessible to screen access software.
- Media Presentations — Media presentations such as streaming audio or video are accompanied by text transcripts of content that can be accessed and read with screen access software.
- Exclusive Use of Color — Color is not used exclusively to convey information (e.g., flagging an error message in the color red). Instead, the use of color to convey information is augmented with text or graphics that carries the same information and is accessible to screen access software.
- Timed Events — For tasks which must be completed within a specific time interval, screen access technology can be used to increase or eliminate the time requirement.
- Hierarchical Relationships — A logical hierarchy must be denoted in a way that is accessible to screen readers (e.g., letters, numbers, quotation marks, etc. as opposed to indentation).

## 2. IMPLEMENTATION

**2.1. Award of Task Orders:** The buying MEEC/University member will follow the implementation processes outlined below.

- a. **Scope of Work and Proposals:** As the need for LMS products and/or related services arise, the buying MEEC member will contact one or more of the awarded Master LMS Contractors. The task order request for proposal (TORP) process will be handled as follows:
- (1) The MEEC member's applicable institutional staff will
    - (i) prepare a written products requirements for the particular LMS product and/or scope of work for the related services inclusive (at a minimum) of:
      - Product specifications, or if unknown, high level functional requirements or business issue to be resolved;
      - LMS implementation time frame/schedule; and,
      - scope of services required of the LMS Master Contractor;
    - (ii) conduct a pre-proposal meeting, if applicable, with one or more of the awarded LMS Master Contractors.
  - (2) The LMS Master Contractor or Contractors will provide to the buying MEEC/University member a proposal for LMS products and/or related services for the specified requirements, that may include, but is not limited to, the following:
    - (a) Product(s) being provided with accompanying specifications and functionalities, and license features;
    - (b) If applicable, the names of the LMS firm's personnel who will manage the staff for the implementation of the LMS inclusive of position and applicable background/resume and references so that the MEEC member may, if it so chooses, to check references of the Key Personnel.
    - (c) Staffing Plan for the required LMS related services including, but not limited to, the number of technical and functional consultants, trainers, etc., and summary of the proposed staffs' expertise.
    - (d) Similar experience with other customers/clients including contact information so that the MEEC member may, if it so chooses, to check references.
    - (e) Quoted a) license fees for the LMS product and/or b) lump sum fee or not-to-exceed price for the implementation services (dependent on the requirements within the MEEC's/University's scope of services) with a breakdown by position, task hours for each, and



billable hourly rate (LMS Master Contractors are required to apply the quoted minimum or better discount(s) off of their educational retail prices; the minimum discount structure was established and specified in their master contract with MEEC/University.)

- (f) A schedule of tasks to ensure that the required time frame to complete the work in accordance with the MEEC's/University's scope\* and,
- (g) A statement indicating the MBE percentage commitment for the project (Note: Although the contract does not have a specific MBE Goal, successful Contractors are encouraged to seek out Maryland State Certified MBE's to participate in the resulting Task Orders. The buying MEEC member may set a MBE percentage goal for a specific Task Order Request (TORP). If a MBE goal is set for a specific TORP, the MBE Forms in Appendix E will be required to be completed and submitted as specified in the TORP.

Note: In addition to the information noted above, the buying MEEC/University member reserves the right to request other information from a LMS Master Contractor as it deems appropriate. In such instances, this requested information will be included in the scope of services/proposal request issued by the applicable MEEC member.

- b. **Evaluation:** The applicable MEEC member will review the proposal(s) received as well as may request an interview of assigned LMS team members and/or a demonstration of the specified/requested product(s) as part of the evaluation. As well, the MEEC member may request that a "sandbox" or other test environment be provided for end users to "test" the proposed LMS. The buying MEEC member may also conduct site visits to other users of the LMS or to the Master Contractor's place of business as part of the evaluation.

Following the evaluation of the proposal, an award will be made by the buying MEEC member to the LMS Master Contractor(s) with the most advantageous proposal. The applicable MEEC member will evaluate the proposal(s) for, but not limited to, cost advantage, proposed assigned key personnel's expertise and time commitment, MBE commitment, ability to meet the required schedule, ability to provide the scope of services, etc.

The evaluation criteria and process is solely at the MEEC member's discretion and will be included in the product requirements and/or scope of work for related services proposal request (TORP) issued by the applicable MEEC member. The award will be based in accordance with the task order proposal request and may be based:

- a) solely on price with the lowest responsive and responsible cost receiving the award;
  - b) on a combination of technical and price evaluation/ranking, or
  - c) solely on technical expertise followed by the MEEC member negotiating a fee with only one LMS Contractor or, if more than one proposal is received, with the top ranked LMS Contractor; in the event of unsuccessful negotiations, the MEEC member may discontinue negotiations with the top ranked firm and proceed to the next rank, and so forth;
- c. **Award:** A Task Order Requirements Contract (TOC) and/or Purchase Order (P.O.) will be issued by the buying MEEC member to the successful LMS Master Contractor for each specific task order.

SECTION III

PROCUREMENT PHASES AND PROPOSAL REQUIREMENTS

**SECTION III  
PROPOSAL REQUIREMENTS  
ARTICLE 1  
PROCUREMENT PROCESS PHASES**

**1. General Proposal Requirements**

**1.1 Transmittal Letter**

A transmittal letter prepared on the Proposer's business stationery must accompany each submittal from the Proposer. The purpose of this letter is to transmit the proposal; therefore, it should be brief, but shall list all items contained within the Proposal as defined below. The letter must be signed by an individual who is authorized to bind the firm to all statements, including services and financial, contained in the proposal.

**1.2 Signing of Forms**

The proposals, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, they shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, they shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer there must be attached a copy of that portion of the by-laws or a copy of a board resolution, duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation.

**2. Summary of Procurement Phases:** This solicitation #90936 will consist of the following phases:

**2.1 Technical Proposal Submittal** (see Article 2 of this Section 3 for detailed information): All proposers will be required to first submit **only a Technical Proposal**. One (1) original and two (2) hard copies (for a total of 3) and seven (7) CD's or flash-drives of the Technical Proposal Submittal are to be provided by each proposer. The Technical Proposal Submittal is due by **Monday, June 20, 2011, at 4:00 p.m. to the Issuing Office**. Late Proposals cannot be accepted. The original hard copy proposal will be the firm's official proposal.

**2.2 Oral Presentation/Discussion/Demonstration Sessions** The University will evaluate the technical proposals and may establish a competitive range consisting of the firms whose technical proposals are determined to be the best technically qualified (ie "shortlisted"). Upon completion of the technical evaluation, the University may elect to conduct Oral Presentations/Discussion/Demonstration Sessions ("Discussion Sessions") with each of these firms. The anticipated dates for Discussion Sessions, if conducted, are July 20 and/or July 21, 2011. Proposers are asked to set these dates aside in their entirety as they are not anticipated to change. If held, shortlisted Proposers will be notified of the date, time, and location of the Discussion Sessions by the Issuing Office. (See Section III, Article 3 for further information.)

**2.3. Price Proposals** are not requested at this time. See Section I, Paragraph 6, and Section III, Article 4 for further information regarding the Price Proposal Phase.

## SECTION III PROPOSAL REQUIREMENTS

### ARTICLE 2 TECHNICAL PROPOSAL REQUIREMENTS

1. The Technical Proposal must be submitted in a sealed envelope. The envelope shall have the Proposer's name, the solicitation name and solicitation number prominently displayed, together with the words, "TECHNICAL PROPOSAL".

**Technical Proposals** shall be delivered on, or before, **Monday, June 20, 2011, no later than 4:00 p.m.** to the UMUC's Issuing Office at the address noted in Section I of the RFP as "The Issuing Office".

The following items must be included in this Technical Proposal (forms for items #b and #d are included in the solicitation package in Appendix A):

- a. Detailed responses to Section III, Article 2, Technical Proposal Criteria, Items 2.1 through 2.5 (noted below);
- b. Bid/Proposal Affidavit;
- c. Sample Insurance Certificate, and,
- d. Acknowledgment of Receipt of Addenda (If addenda are issued prior to the Initial Technical Proposal due date, this form acknowledging receipt of all addenda **MUST** be included with your Initial Technical Proposal.)

#### 2. **Technical Criteria:**

The following information must be furnished in the Technical Proposal per this solicitation. Failure to include any of the items listed below may disqualify your firm's response.

The Technical Proposal should be prepared in a clear and concise manner. It should address all appropriate points of this RFP **except price information**. The contents of this volume must address the following items, as indicated below, and additionally, must include the appropriate completed forms or responses as indicated in items 2.2 through 2.7 as listed below. *Proposers must paginate the Technical Proposal and are requested to provide tabs to separate responses to each of the technical criteria.*

In general, proposals submitted in response to this RFP must demonstrate that the proposed firm will have:

- An understanding of the scope and breadth of the LMS and related product(s) to be provided under the contract;
- Sufficient resources and capacity to provide and support the products specified;
- Easy access/use to the LMS products with minimum technical (hardware/software) requirements; and,
- Successful past performance with similar education clients.

## 2.1 **Executive Summary:**

The proposal must begin with an Executive Summary that clearly and concisely summarizes the content of the proposal. This summary is for introductory purposes and will not be part of the evaluation process as the information is to be a summary with the details provided in subsequent proposal contents.

The following items 2.2 through 2.5 are listed below in order of importance. Proposers are requested to compile their proposals in the same order and to provide tabs or separators of some kind between items. It is the Vendor's responsibility to tailor its response to demonstrate its qualifications to perform the scope of work specifically for USM/MEEC.

## 2.2 **Scope of LMS Product Offerings and Approach to Access and Support the Products:**

- The Proposing Firm is to provide an overview of its LMS and related product offerings; this can be provided via the Firm's standard product marketing material; Minimum technical requirements for users should be included.
- The Proposing Firm is to provide information as to how it maintains its product offerings remain current as technology changes;
- How does the Proposing Firm ensure its users of its software or services are "version-current" ;
- The Proposer is to explain how a buying entity would initially access/install the LMS and/or related Products. What professional services, product support, training, hosting ability, implementation services, consulting services, etc. are available to the MEEC members? In addition, the Proposer is to provide an explanation as to how the Account Representative and/or other Technical Staff are involved with the initial access/installation set up.
- The Proposing Firm is to provide its available licensing options, such as named users, site license, concurrent users, FTE's, etc. and services ("lump sum based on SOW"; "hourly rates of staff professionals"; "per help desk contact"; "services are included in license fees", etc.) **Note: Actual pricing is NOT to be provided, but simply an explanation as to how the LMS Provider prices its product and implementation/professional services.**
- The Proposer is to explain if the LMS is customizable and if so, how this would be done under any resulting contract. What additional contract terms, if any, would be required (from the vendor perspective) for the buying entity to customize the software? In particular, how does the vendor propose to handle intellectual property rights impacted by this?

- The Proposer is to explain its technical support/help services provided to its customers inclusive of escalation procedures.
- The Proposer is to provide a narrative explaining products and/or services that may be provided by a Maryland State Certified Minority Business Enterprise (MDOT MBE).

Please provide concise, but detailed information. Within the response, the firm should demonstrate both the magnitude and comprehensiveness of its LMS and related product offerings by detailing its proposed products/services for USM/MEEC. The response should be specific to the scope of work for USM/MEEC rather than a boilerplate or generic response.

## 2.3 Company Profile/Firm Experience/Firm References

2.3.1 The Proposer is to provide a **narrative regarding the Company Profile**, to include the following elements:

- An organization chart of the company showing parent company and any affiliates as well as where the company that will be servicing USM/MEEC is found on the organization chart
- Address of firm's headquarters, nearest offices, and branch offices
- Address of the office that will be serving USM/MEEC
- Size of the company as measured by facility and staff resources available; note if the firm is a registered Small Business, or is eligible to register as a Small Business, with the State of Maryland, this should be included
- A brief history of the firm including how long firm has been in business of providing LMS products;
- Total number of employees in the firm; and also by branch; type of employees (ie, Sales Force, ordering department, accounting department, Technical Support, etc.) available
- Products and Services company provides
- Number of educational clients including past experience with Potential Participating Institutions noted in Appendix F.
- **Annual Sales Volume** for company and the branch office which will service the University on a per year basis for the last three (3) years [2008, 2009, and 2010].
- Firms shall provide a **statement of financial condition**, prepared in accordance with Generally Accepted Accounting Principles. It is preferable that audited financial statements of the firm's last fiscal year and the past five (5) years are provided. This information shall remain confidential unless the University is required by legal order to release such information. (Note: At the sole discretion of MEEC/USM, a Dun & Bradstreet Report may be requested of the shortlisted firms.)

2.3.2 **Firm Experience/Firm References:** Proposers are to provide three (3) references of similar current contracts (within the last 3 years) that he/she deems similar to the contract required by USM/MEEC. For each contract provide:

- Contact information (name, firm name, email address, and phone number).
- A brief statement describing the LMS product(s) provided to the client and what type of contract (i.e. seat license or based on FTE),

- The dollar value of the contract (if this is confidential information, please provide a range such as “greater than \$1M annually” or “between \$1M and \$2M per year”, etc.)
- The number or years servicing this client
- The name of the Single Point of Contact and the Account Representative(s) for this client assigned to the contract, (Higher consideration will be given if these are the same Key Personnel to be assigned to USM/MEEC in the same roles. (See 2.4.2 below for definition of these two positions.)
- The term of the contract (start and end date), and
- Similarities to the proposed USM/MEEC contract.

**2.3.3 Firm references\*\*:** The University may check references of the firm by contacting the clients provided in item 2.3.2 above. Contact information provided must include the name of the contact, the contact’s title, phone number (including extension if applicable). The contact provided should be able to speak to the performance of the contractor. USM/MEEC reserves the right to check any other references including past performance with any MEEC members if applicable. References will be held in the strictest of confidence by the University/MEEC.

**\*\*Note regarding References:** If USM/MEEC elects to check references, only those proposing firms reasonably susceptible of the award will have their references contacted, however, all firms responding must supply this information within their Technical Proposals submitted on June 20, 2011 by 4:00 p.m.

**2.3.3.1.** In addition, Proposing Firms are to provide two (2) **former** customers for whom the firm is no longer providing LMS Products. Information provided it to include the LMS Products provided, the term of the contract, and why the Proposing Firm is no longer providing the LMS Product to this customer. Contact information of an appropriate staff person at this customer is to be provided including the name of the contact, the contact's title, and phone number (including extension if applicable). The contact provided should be able to speak to the performance of the Contractor and the quality of its LMS Products.

## **2.4 Staffing of the Account/Key Personnel/Key Personnel References:**

2.4.1 Staffing Plan: Proposing firms are to provide a narrative as to how they plan to staff the contract. Will one or more account representatives service the MEEC participating institutions? If more than one, how will responsibilities be assigned? What problem resolution escalation path is available to a MEEC participating institution? What technical support is available from the Provider?

2.4.2 Provide a resume for the following Key Personnel (It is acceptable that the Account Representative and the Single Point of Contact be the same person.):

-Dedicated Account Representative(s). Proposer must provide a dedicated account representative(s) for this agreement. Provide a resume on each of the assigned representatives. This is the person (or persons) that buying MEEC members will directly contact for LMS needs and utilization of the resulting agreement. (Note: It is understood by and acceptable to USM/MEEC that more than one Account Representative be named such as one for K-12, one for Community Colleges, one for



Higher Education, or similar stratification. Proposers are to submit all applicable resumes as well explain the roles and responsibilities in response to 2.4.1 above.)

-Single Point of Contact: Proposer must specify a sole point of contact to the MEEC Executive Director for administrative and contractual communications. Response will include name, e-mail address, mailing address, telephone, and all applicable fax, pager, and mobile phone numbers

For each of the above people, provide a complete resume including educational accomplishments, employment history (with dates of employment and titles held), similar/relevant contract experience, and basis for selection for this contract.

**The resume is to include:**

- a) educational background including degrees earned with dates;
- b) employment history (with dates of employments), including all positions and dates of these positions held with all employers; and
- c) similar contracts information (minimum of **three** for each person), preferably in the same role as proposed for the USM contract. Contracts should be recent (within the last three years) and of similar size, scope, and complexity to this proposed contract.
- d) Other projects, including geographical location, person is assigned to during the USM/MEEC contract term are to be provided.
- e) Explanation as to why they were selected for this contract

By submitting the Account Representative(s) and Single Point of Contact for consideration, the Proposer is committing these people to USM/MEEC for the duration of the contract, if awarded. No personnel changes will be permitted without written authorization from the University via a contract amendment. The University, at its sole discretion, reserves the right to request personnel changes if deemed in the best interest of the contract.

**2.5 Proposing Firm's License Agreement** - This is to be provided for information purposes only. Refer to Section I, Paragraph 8 for information regarding the contractual agreement.

Note 1: Any additional license terms required for "add-ons" particularly those related to customizable products is also to be provided.

Note 2: It is the intent of USM that a University Master Agreement be issued to the successful vendor(s), however, if the vendor has a license agreement that is to be considered by the USM, this agreement must be submitted with the technical proposal. The terms and conditions of the license shall not conflict with any terms within this solicitation document or with the contract terms and conditions included in Appendix F. The USM may or may not sign the vendor license agreement, however, appropriate applicable license terms may be included in the resulting contract. By submitting a response to this solicitation, the Proposing Firm is agreeing that the terms and conditions in Appendix F will be incorporated in any resulting contract.

**2.6. Proposal Affidavit** State Procurement Regulations require that each proposal submitted by a firm include a signed Proposal Affidavit. A copy of this Proposal Affidavit is included in **Appendix A**.

**2.7. Acknowledgement of Receipt Of Addenda Form:**

If any addenda to the RFP documents are issued prior to the due date and time for proposals, this form (found in **Appendix A**) is to be completed, signed, and included in the Proposer's Technical Proposal.

**SECTION III  
PROPOSAL REQUIREMENTS**

**Article 3  
ORAL PRESENTATION/DISCUSSION/DEMONSTRATION SESSIONS**

**A. Oral Presentations/Discussion/Demonstration Sessions (UNIVERSITY/MEEC OPTION):**

1. The USM may, at its sole discretion, invite those Proposers who are reasonably susceptible of the award based on the initial proposal evaluation be requested to attend an Oral Presentation/Discussion/Demonstration Session (“Discussion Sessions”) at the University. If held, it is expected that the proposed Dedicated Account Manager (the point of contact for buying MEEC members) and the Single Point of Contact (the point of contact for the MEEC Executive Director) for the contract and the Executive in Charge (the person responsible for sufficient resources being allocated to the Agreement and any resulting Task Orders) attend this session. **The anticipated dates for Discussion Sessions, if conducted, are July 20 and/or July 21, 2011.** Proposers are asked to set these dates aside in their entirety as they are not anticipated to change. If held, shortlisted Proposers will be notified of the date, time, and location of the Discussion Sessions by the Issuing Office. **These sessions will be held at a location in Maryland and scheduled at the convenience of MEEC as part of the overall evaluation of proposals.** Proposers may be required to submit additional information in writing and/or to answer specific questions from the Technical Evaluation Committee during a Discussion Session
2. The purpose of the oral presentation is as follows:
  - 2.1 To allow the University/MEEC to meet the Proposer's key personnel.
  - 2.2 To allow the Proposer to highlight aspects of the selected areas of its Technical Proposal; i.e. Scope of LMS Product Offerings and Approach to Access and Support the Products; Company Profile/Firm Experience; and Staffing of the Account/Key Personnel.
  - 2.3 To allow the University/MEEC to see a demonstration of the Proposer's LMS Product(s);
  - 2.4 To discuss the recommended pricing structure with each shortlisted Proposer; and,
  - 2.5 To respond to specific topics that the University/MEEC may or may not be requested in writing before the presentation day.

If held, the Oral Presentation/Discussion/Demonstration Session forum will be informal as the MEEC is **not** interested in solely a marketing presentation; rather, the MEEC would be requesting a demonstration of the LMS offerings and a discussion session with each of the shortlisted firms that allows ample time for the University and the Proposing Firm to ask questions and discuss the firm's technical proposal and see a demonstration of its LMS product as it relates to the scope of the products and the firm's capabilities/qualifications.

Upon completion of the Oral Presentations/Discussion/Demonstration Sessions, if held, the MEEC will finalize the Technical Evaluation of the proposals.

Note: MEEC/the University reserves the right to not hold such Discussion Sessions and, instead, proceed directly to the Price Proposal Phase following the evaluation of the submitted Technical Proposals.

**SECTION III  
PROPOSAL REQUIREMENTS**

**ARTICLE 4  
PRICE PROPOSALS**

**1. Price Proposals:**

Price Proposals are not requested at the time of submission of the Technical Proposal. Rather, Price Proposals will be requested only from those Proposers who are short-listed after the Second Phase Technical Evaluation (See Section IV regarding the Evaluation Process). An addendum will be issued at the time in which Price Proposals are requested to confirm the due date and time. The Price Proposal must be submitted in a sealed container. The container shall have the Proposer's name, the contract name and the RFP number prominently displayed, together with the words "PRICE PROPOSAL".

1.1 **A sample Price Proposal form** is included in **Appendix B** for information only. It is anticipated that the pricing structure may evolve as the procurement progresses. The due date and time for price proposals is anticipated to be July 29, 2011 on or before 4:00 p.m. Price Proposals will be opened privately. Prices will be firm, at a minimum, through June 30, 2012. Proposers who hold the prices for longer will be given more favorable consideration in the evaluation of the Price Proposals.

**1.2 Pricing of the LMS product is anticipated to be provided in several ways:**

**1.2.1** Enterprise Wide License (several options) based on the definitions of FTE (refer to definition of FTE below); such license would allow unlimited institutional wide user access to the LMS and would be paid annually (unless another interval is mutually agreed).

**-Full-Time Equivalent of Faculty and Staff with no exclusions;** employees of affiliates (such as, but not limited to, a healthcare professional group at an academic health center) would also be able to utilize such a license.

**-Full-time Equivalent based on Faculty, Staff AND Students**

**-Full-time Equivalent based on Faculty, Staff, Students, and Alumni** (or other affiliated groups)

**-Full-Time Equivalent per MEEC's definition** which is: The total of Full time faculty plus full time staff plus 1/3 part time faculty plus 1/2 part time staff.

- **Per seat license;** a certain number of licenses would be purchased by the buying entity. Proposing firm is to provide its seat license ranges with applicable per seat price. License would be paid annually (unless another interval is mutually agreed). Additional seat licenses may be purchased throughout the term of the contract at the same unit price. Per license should be available to faculty, staff, students, affiliates of educational institutions (such as, but not limited to, professional groups associated with an academic healthcare institution) and alumni.

- **Unit Prices** for add-ons or enhancements that could be purchased with the basic package or added later at the MEEC Member’s option.
- Other licensing terms that may be offered by the Proposer are to be specified as an attachment to the Price Proposal Form.

OR

1.2.2 MEEC/USM may instead request shortlisted Proposers to quote minimum discounts from the Proposer’s educational retail prices and hourly rates for professional services. Hourly rates are to be fully loaded as there are no reimbursables associated with the resulting contract (that is the hourly rates are to include all costs associated with the staff person inclusive of travel costs.).

1.2.3 A sample Price Proposal Form is provided Appendix B, however, it is anticipated that as the procurement progresses this will be refined and/or revised.

**1.3 Prices for the contract renewal years.** It will be the responsibility of the contractor to request a price increase, if any, by February 1 of each year of the Contract. Any price increase not received by that time, will not be considered and pricing in the subsequent year will remain as stated during the just completed contract term. A price increase, if any shall not exceed the Consumer Price Index (“CPI”) for “All Urban Consumers” as published by the US Department of Labor Statistics. For purposes of calculating the potential increase, the CPI to be used will be the index for twelve-month period ending at the previous calendar year. For example, if the contract year ends June 30, 2013, the price index for twelve-month period ending December 2012 will be used. Statistics will be referenced as a **cap** for negotiable purposes only. Contractor is not to assume that any price increase will be applied to yearly renewals. As well, increases are not cumulative for prior years; if a contractor fails to request a price increase in one year and then requests an increase for the subsequent year, the contractor cannot include a cumulative amount which includes the prior annual term. Any increase approved by MEEC will take effect on July 1st of each year and be effective for a minimum of twelve (12) months.

Upon approval by the University, any such modified in fees will constitute the price for the next twelve month period. The University reserves the right to terminate this annually without penalty giving thirty (30) days written notice. As well, the University may terminate for convenience or default per the contract terms in Appendix C.

END OF SECTION III

## **SECTION IV EVALUATION AND SELECTION PROCEDURES**

### **1. Evaluation and Selection Committee**

All contractors' proposals received by the closing deadline will be reviewed. The Procurement Officer shall establish an Evaluation and Selection Committee to review and evaluate the proposals. The Committee may request additional technical assistance from any source.

### **2. Evaluation Procedure**

#### **2.1 Qualifying Proposals**

The Procurement Officer shall first review each proposal for compliance with the mandatory requirements of this RFP. Failure to comply with any mandatory requirement will normally disqualify a contractor's proposal. MEEC/USM reserves the right to waive a mandatory requirement when it is in its best interest to do so. The contractor must assume responsibility for addressing all necessary technical and operational issues in meeting the objectives of the RFP. Each section of the proposal will be evaluated according to the criteria listed below. Proposals cannot be modified, supplemented, cured, or changed in any way after the due date and time for technical proposals, unless specifically requested by MEEC/USM.

The intent of this RFP is to provide LMS Providers an opportunity to present their qualifications, experience, and conceptual approach to providing the scope of services in relation to the needs of MEEC members. The manner in which the proposing team presents their qualifications will be regarded as an indication of how well the Proposer's philosophy, approach, organizational culture, working style and communications style fit with MEEC's. Submittals that concisely present the information requested in the order and the manner requested will be considered more favorably than a submittal from a Proposer of commensurate qualifications that displays a lack of organization, conciseness or attention to detail.

#### **2.2 Technical Evaluation**

After compliance with the mandatory requirements in this RFP has been determined, the Committee shall conduct its evaluation of the technical merit of the proposals in accordance with the Evaluation Criteria. Proposals are evaluated to determine which proposal(s) is (are) most advantageous to MEEC. The process involves applying the evaluation criteria contained in the RFP, comparing the proposals to each other, and ranking the proposals from most to least advantageous. If used in the evaluation process, numerical point scores will be useful guides but will not be the sole factor in determining the award. The decision for the award will not be made solely by the raw scores themselves, but rather by the strengths, weaknesses, advantages, and deficiencies that the scores represent.

The criteria that will be used by the committee for the technical evaluation of the proposals for this specific procurement are listed below. Each committee member will evaluate the proposals on each major criterion. Factors are listed in order of importance.

Minor irregularities in proposals, which are immaterial or inconsequential in nature, may be waived wherever it is determined to be in the MEEC/University's best interest.

### 2.2.1 Initial Technical Evaluation

An evaluation of the Initial Technical Proposals will be conducted by the MEEC/University's Evaluation and Selection Committee. The order of importance of the technical criteria is as follows:

- 1) Scope of LMS Product and Related Services Offerings and Approach to Provide and Support the Products;
- 2) Company Profile/Firm Experience
- 3) Staffing of the Contract/Key Personnel

Those proposals not considered to be reasonably susceptible of being selected for award may be rejected after the initial evaluation of the Technical Proposals and will not progress further in the procurement. A short list will be developed based on the initial technical evaluation results. Upon completion of the initial technical evaluation, all proposers will be notified as to the results of the initial technical evaluation of his/her firm's technical proposal. Only shortlisted firms will advance in the procurement process.

### 2.2.2 Second Phase Technical Evaluation

Based on the selection committee's initial review of proposals, MEEC/USM may invite, at its sole discretion and without cost to itself, the short listed firms to make a presentation of their proposal and to demonstrate their capabilities and expertise, including a brief overview of their product line, as a further consideration in the selection process. (Proposing Firms are advised to provide complete written Technical Proposals and must not rely on the opportunity to clarify or amend the written proposal through an oral presentation/discussion session as such sessions may not be held.) Additional written information (with or without Discussion Sessions being held) may also be requested during this phase. Only those contractors who are to be reasonably susceptible of being selected for award shall be offered the opportunity to participate in the process.

Following the Oral Presentation/Discussion/Demonstration Sessions, if held with the short listed firms, OR following the receipt of additional requested written information, a **Second Phase Technical Evaluation** will be conducted. The order of importance of the technical criteria will remain the same with the references for the Firm incorporated into the appropriate criteria; that is, the order of importance will remain as follows:

- 1) Scope of LMS Product and Related Services Offerings and Approach to Provide and Support the Products;
- 2) Company Profile/Firm Experience/Firm References
- 3) Staffing of the Contract/Key Personnel



In the Second Technical Evaluation, all information provided by the Proposer in the Technical Proposal will be re-evaluated based on all written submittals and the Oral Presentation/Discussion/Demonstration Session (if such sessions are held). Only those proposals that remain susceptible of the award will progress further in the procurement. A second shortlist may result from this evaluation. Upon completion of the second phase technical evaluation, all proposers will be notified as to the results of the second phase technical evaluation of his/her firm's Technical Proposal.

### **2.3 Price Proposal Phase:**

Upon completion of the Second Phase Technical Evaluation, **only** those firms whose technical proposals remain short listed will be requested to provide a Price Proposal.

It is the intent of MEEC/USM that the Price Proposal will consist of quoting minimum discounts from the LMS Providers educational retail prices and hourly rates for professional services. Hourly rates are to be fully loaded as there are no reimbursables associated with the resulting contract (that is the hourly rates are to include all costs associated with the staff person inclusive of travel costs.) See Appendix B for the Price Proposal Form.

#### **2.3.1 Price Evaluation**

Price Proposals will not be opened publicly. Price Proposals will be evaluated based on either a) the quoted licensing and professional services OR b) the minimum discounts provided for the LMS Providers educational retail prices. If discounts are requested, such discounts are to be considered minimums, that is the buying MEEC member may request or the LMS Provider may quote greater discounts for specific TORP's. The LMS Providers educational retail prices are to remain constant for a minimum of twelve (12) months.

MEEC/USM may elect to request Best & Final Price Proposal(s).

MEEC/USM will establish a financial ranking of the proposals from lowest to highest total offers.

**3. Discussions.** MEEC/USM reserves the right to recommend an Offeror for contract award based upon the Offeror's technical proposal and price proposal without further discussion. However, should the Committee find that further discussion would benefit MEEC/USM and the State, the Committee shall recommend such discussions to the Procurement Officer. Should the Procurement Officer determine that further discussion would be in the best interest of the MEEC/USM and the State, the Procurement Officer shall establish procedures and schedules for conducting discussions and will notify responsible Offerors.

**4. Best and Final Offers.** When in the best interest of the MEEC/USM and the State, the Committee may recommend and the Procurement Officer may permit qualified Offerors to revise their proposals by submitting "Best and Final" offers.

## **5. Final Ranking and Selection**

Following evaluation of the technical proposals and the price proposals, the Evaluation and Selection Committee will make an initial overall ranking of the proposals and recommend to the Procurement Officer the award of the contracts to the responsible Offerors whose proposals are determined to be the most advantageous to MEEC/USM and the State of Maryland based on the results of the final technical and financial evaluation in accordance with the University System of Maryland Procurement Policies and Procedures. Technical merit will have a greater weight than financial in the final ranking. It is anticipated that multiple awards will result from this procurement.

Award may be made to a proposal with a higher technical ranking even if its cost proposal is not the lowest. The decision of the awards of the contracts will be made at the discretion of the Procurement Officer and will depend on the facts and circumstances of the procurement. The Procurement Officer retains the discretion to examine all factors to determine the award of the contract. The goal is to contract with multiple Contractors that provide the best overall value to MEEC/USM.

The MEEC/University may select one or more Contractors to further engage in negotiations, including terms of a contract and other issues to be incorporated into the contract. The MEEC/University reserves the right to make an award with or without negotiations.

END OF SECTION IV

## **SECTION V TERMS AND CONDITIONS OF THE PROPOSAL**

### **5.1 Contractor's/Proposer's Responsibility.**

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

### **5.2 General Requirement.**

Proposals must be made in the official name of the firm or individual under which business is conducted, showing the official business address, state in which it is incorporated or organized (if Proposer is not an individual) and must be signed by a duly authorized person. Proposals must be prepared in writing, simply and economically, providing a straightforward, concise description of the Proposer's proposal for meeting the required specifications of this procurement. Proposers must paginate each proposal volume and are requested to provide tabs to separate responses to the technical criteria.

### **5.3 Receipt of Proposals.**

Proposals will not be opened publicly; nor, can the identity of Proposers (individuals or entities) submitting proposals ("Proposers") be disclosed prior to actual contract award.

### **5.4 Duration of Offers.**

Proposals (Technical Proposal and, if applicable, Price Proposal) submitted in response to this solicitation are irrevocable for 120 days following the closing date of the Price Proposal due date. This period may be extended by mutual agreement between the vendor and the MEEC.

### **5.5 Rejection or Acceptance of Proposals.**

The MEEC reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP, to waive minor irregularities, to negotiate in any manner necessary to best serve the interest of MEEC. Further, MEEC reserves the right to make a whole award, multiple awards, a partial award or no award at all. Proposers judged by the procurement officer not to be responsible or Proposers whose proposals are classified as not reasonably susceptible of being selected for award shall be so notified. MEEC reserves the right to increase or decrease the quantities of any materials, equipment, supplies or services.

### **5.6 Cancellation of the RFP.**

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

### **5.7 Incurred Expenses.**

Neither MEEC nor the State of Maryland is responsible for any expenses that Proposers may incur in preparing and submitting proposals or in making oral presentations of their proposals, if required.

### **5.8 Payment.**

The State of Maryland usually provides payments on a net 30 day basis for MEEC member approved invoices. Payment provisions shall be in arrears, with late payment and interest calculated as provided by Maryland law. For purposes of determining whether a prompt-payment discount, if applicable, may be taken by MEEC, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product.

### **5.9 Electronic Funds Transfer (“EFT”).**

By submitting a response to this solicitation, the Offeror agrees to accept payment by electronic fund transfer unless the State Comptroller’s Office grants an exemption. The selected Offeror shall register using the form attached as Appendix D, the GAD X-10 Contractor EFT Registration Request Form. This form is to be submitted directly to the Comptroller’s Office (not to UMUC or MEEC). Any request for exemption must be submitted to the State Comptroller’s Office for approval at the address specified on the GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

### **5.10 Procurement Regulations.**

This RFP shall be conducted in accordance with USM Procurement Policies and Procedures. The procurement method is Competitive Sealed Proposals. The text of the Policies and Procedures is available at <http://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.html>.

### **5.11 Confidentiality of Proposals.**

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

### **5.12 Oral Presentation /Discussion Sessions.**

Contractors who submit proposals may be required to make individual presentations to the MEEC representatives in order to clarify their proposals. Proposers will be contacted by the Issuing Office accordingly. (See Section III, Article 3, for further information.).

### **5.13 Evaluation of Offers.**

Contract Award will be made to the responsible offeror(s) whose proposal best meets the needs of MEEC members as determined by the Procurement Officer. All proposals will be evaluated by a MEEC evaluation committee. After considering the factors set forth in this RFP, the committee will make recommendations for the award of a contract to the Procurement Officer to the contractor(s) whose proposal(s) is/are determined to be the most advantageous to the MEEC members. All offerors will be notified of the award selection.

#### **5.14 Proposal Affidavit and Certifications.**

State procurement regulations require that proposals contain certifications regarding non-collusion, debarment, cost and price, etc. The affidavit form, which should be completed by all respondents and returned with their respective responses, is included as **Appendix A** of the RFP.

#### **5.15 Economy Of Preparation.**

Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor's offer to meet the requirements of the RFP.

#### **5.16 Multiple Proposals.**

Contractors may submit more than one proposal, however, USM/MEEC is not required to consider more than one proposal from a Proposer.

#### **5.17 Alternate Solution Proposals.**

Contractors may submit an alternate to the solution given in this RFP, however, USM/MEEC is not required to consider any alternate solutions.

#### **5.18 Telegraphic/Facsimile Proposal Modifications.**

Contractors may modify their proposals by telegraphic, e-mail, or facsimile communication at any time prior to the due date and time set to receive proposals provided such communication is received by the State issuing agency prior to such time and, provided further, the State agency is satisfied that a written confirmation of the modification with the signature of the proposer was mailed prior to the time and date set to receive proposals. The communication should not reveal the proposal price but should provide the addition or subtraction or other modification so that the final prices, percent or terms will not be known to the State agency until the sealed proposal is opened. If written confirmation is not received within two (2) days from the scheduled proposal opening time, no consideration will be given to the modification communication. No telephone, telegraphic, or facsimile price proposals will be accepted.

#### **5.19 Contractor Responsibilities and Use of Subcontractors**

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

#### **5.20 Public Information Act.**

Offerors must specifically identify those portions of their proposals, if any, which they deem to contain confidential, proprietary information or trade secrets and must provide justification why such material should not, upon request, be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Sub-Title 6, of the Annotated Code of Maryland. Contractors must clearly indicate each and every section that is deemed to be

confidential, proprietary or a trade secret (it IS NOT sufficient to preface your proposal with a proprietary statement,). Failure to comply may result in rejection of your proposal.

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

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

**5.22 Arrearages.**

By submitting a response to this solicitation, a contractor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits and that it shall not become so in arrears during the term of the contract if selected for contract award.

**5.23 Taxes.**

MEEC members may be exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes, except as noted in applicable sections of COMAR. Exemption Certificates shall be provided upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, Contractor shall pay the Maryland Sales tax and the exemption does not apply.

**5.24 RFP Response Materials.**

All written materials submitted in response to this RFP become the property of MEEC/USM and may be appended to any formal documentation, which would further define or expand the contractual relationship between MEEC and the successful contractor(s).

**5.25 Debriefing of Unsuccessful Offerors.**

Unsuccessful proposers (“Offerors”) may request a debriefing. If the proposer chooses to do so, the request must be submitted in writing to the Procurement Officer within ten days after the proposer knew, or should have known its proposal was unsuccessful. Debriefings shall be limited to discussion of the specific proposer’s proposal only and not include a discussion of a competing offeror’s proposal. Debriefings shall be conducted at the earliest feasible time after the recommendation of the award has been determined.

The debriefing may include information on areas in which the unsuccessful proposer’s proposal was deemed weak or insufficient. The debriefing may NOT include discussion or dissemination of the thoughts, notes or ranking from an individual evaluation committee member. A summarization of the procurement officer’s rationale for the selection may be given.

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

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

If the bidder/offeror has any questions concerning application of the State Ethics law to the bidder/offeror's participation in this procurement, it is incumbent upon the bidder/offeror to see advise from the State Ethics Commission: The Office of The Executive Director, State Ethics Commission, 9 State Circle, Suite 200, Annapolis, MD 21401. For questions regarding the applicability of this provision of the Public Ethics Law, contact the State Ethics Commission, toll-free phone number 877-669-6085, or see the web site [ethics.gov.state.md.us](http://ethics.gov.state.md.us). The procurement officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the bidder/offeror to obtain advise from the State Ethics Commission and may reject a bid or proposal that would result in a violation of the Ethics law.

The resulting contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the contractor or any State of Maryland employee in connection with this procurement.

**5.27 Assistance in Drafting.**

Under the State Government Article § 15-508 of the Annotated Code of Maryland, an individual or person who employs an individual who assists an executive unit in drafting specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. For questions regarding the applicability of this provision of the Public Ethics Law, contact the State Ethics Commission, toll-free phone number 877-669-6085, or see the web site [ethics.gov.state.md.us](http://ethics.gov.state.md.us).

END OF SECTION V

**APPENDIX A**  
**TECHNICAL PROPOSAL FORMS**



BID/PROPOSAL AFFIDAVIT - March 2011

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 business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

(8) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C(1)—(7) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**D. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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**E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**F. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

**G. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require 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 the 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.

#### I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §J(2)(b), above;
- (h) Notify its employees in the statement required by §J(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §J(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §J(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic \_\_\_) (foreign \_\_) 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 of 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: \_\_\_ .

(If not applicable, so state).

(2) Except as validly contested, the business 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 Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**L. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

M. Repealed.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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: \_\_\_\_\_ (Signature)

(Authorized Representative and Affiant)\_\_\_\_\_

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Proposer Name)

\_\_\_\_\_ (Federal Identification Number)

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM**

**RFP NO.:** 90936

**TECHNICAL PROPOSAL DUE DATE:** June 20, 2011 AT 4:00 P.M.

**RFP FOR:** MEEC Learning Management Systems

**NAME OF PROPOSER:** \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

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

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

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

**APPENDIX B  
PRICE PROPOSAL FORM**

PROPOSAL NO.: RFP 90936  
PRICE PROPOSAL DUE DATE: \_\_\_\_\_, 2011, AT 4:00 P.M.  
PROPOSAL FOR: MEEC Learning Management Systems  
PROPOSER: \_\_\_\_\_  
Federal Identification Number/Social Security Number: \_\_\_\_\_

**PRICE PROPOSAL**

DATE \_\_\_\_\_

Valerie Rolandelli  
AVP, Strategic Contracting  
University of Maryland University College  
Office of the COO and CFO  
3501 University Blvd. East, Suite ICC-3120  
Adelphi, MD 20783

Dear Ms. Rolandelli:

The undersigned hereby submits the Price Proposal as set forth in RFP #90936 dated \_\_\_\_/\_\_\_\_/2011 and the following subsequent addenda:

Addendum \_\_\_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_\_\_ dated \_\_\_\_\_  
Addendum \_\_\_\_\_ dated \_\_\_\_\_

**We confirm that this Price Proposal is based on the Requirements per the RFP and any subsequent addenda as noted above.**

Having received clarification on all matters upon which any doubt arose, the undersigned proposes to complete the work for the work as described in this RFP and subsequent Addenda as noted above. By signing and submitting this response, undersigned hereby agrees to all the terms and conditions of this RFP including any issued addenda. Proposers are cautioned to verify their final proposals prior to submission, as MEEC/USM cannot be responsible for Proposer's errors or omissions. Any price proposal that has been accepted by MEEC/USM may not be withdrawn by the contractor.

Attach a list of unit prices for:

**A. Applicable Software License Fees:** (Proposers are to list all software licenses and quote a fixed fee for each of these. Proposers are also to advise if these fees are a) one-time flat fees for the entire term of the contract or if these fees are applicable on an annual basis. If the fees are applicable on annual basis quotes are to be provided for the initial 12 months of the contract.

**B. Hourly Rates by Job Title for Related LMS Services:** Proposers are to provide a list of all-inclusive hourly and/or daily rates for personnel by job title. Rates are to be inclusive of all expenses and costs, including travel, for personnel titles that are likely to be assigned for a variety of functional and technical roles to a MEEC member for a Task Order. There are no reimbursables allowed under the resulting Master Contracts.



**C. Prices for the contract renewal years:** We have read and confirm that we understand Section III, Article 3- Price Proposals, Item 1b regarding price increases for Years 2, 3, 4, and 5 of the original term as well as the potential renewal year(s) to a maximum of five additional years. Quoted maximum annual increase: \_\_\_\_\_%

AND/OR

**D. Minimum discount for products and services from Proposing Firm's Educational Retail Price**

\_\_\_\_\_ % (Current Educational Retail Price is to be attached.)

We understand that by submitting a proposal we are agreeing to all of the terms and conditions included in the RFP documents, and that the Bid/Proposal Affidavit submitted as part of the technical proposal remains in effect.

The evaluation and subsequent final ranking of proposals will be in accordance the RFP documents. We understand that technical weighs greater than financial.

We understand that the MEEC/University reserves the right to award a contract (or contracts) for all items, or any parts thereof, as set forth in detail under the information furnished in the RFP document. We further confirm that the Account Manager and Single-Point-of Contact and other Key People named within our Technical Proposal will be assigned to the MEEC Contract for the duration of this project. We understand that no changes in these assignments will be allowed without written authorization from the MEEC/University via contract amendment prior to such changes being made.

Enclosure: Unit costs for Software Licensing available to MEEC members  
Name, Title, Role on Project, and Hourly Rate of Personnel to be attached (for related LMS services)  
Educational Retail Price (if applicable)  
Attachment A - MBE Utilization and Fair Solicitation Form

(Signatures should be placed on following page.)

The offeror represents, and it is a condition precedent to acceptance of this proposal, that the offeror has not been a party to any agreement to submit a fixed or uniform price. Sign where applicable below.

**A. INDIVIDUAL PRINCIPAL**

In Presence of Witness: \_\_\_\_\_

FIRM NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_  
SIGNED \_\_\_\_\_  
PRINTED NAME \_\_\_\_\_  
TITLE: \_\_\_\_\_

---

**B. CO-PARTNERSHIP PRINCIPAL**

\_\_\_\_\_  
(Name of Co - Partnership)  
ADDRESS \_\_\_\_\_

\_\_\_\_\_  
In Presence of Witness:

TELEPHONE NO. \_\_\_\_\_

\_\_\_\_\_ as to

BY \_\_\_\_\_  
(Partner)

\_\_\_\_\_ as to

Printed Name: \_\_\_\_\_

\_\_\_\_\_ as to

BY \_\_\_\_\_  
(Partner)

Printed Name: \_\_\_\_\_  
BY \_\_\_\_\_  
(Partner)

---

**C. CORPORATION**

\_\_\_\_\_  
(Name of Corporation)  
ADDRESS \_\_\_\_\_

Attest:

TELEPHONE NO. \_\_\_\_\_

\_\_\_\_\_  
[Printed Name of Corporate (or Assistant Corporate) Secretary]

\_\_\_\_\_  
[Corporate (or Assistant Corporate) Secretary Signature for Identification]

BY: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer and Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## Attachment A

### *CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION*

#### **AFFIDAVIT**

#### **\*\*\*\*\*EFFECTIVE OCTOBER 1, 2004\*\*\*\*\***

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted to Solicitation No. 90936, I Affirm the Following:

**1. I acknowledge the Overall certified Minority Business Enterprise (MBE) Participation goal of 0% percent for the Master Agreement. I further acknowledge that an individual buying MEEC member may set a MBE Participation goal for a specific Task Order Request for Proposal (TORP) to be done under the resulting Master Agreements,**

and, if specified in the TORP, sub goals of \_\_\_\_\_ percent for MBEs classified as African American-owned and \_\_\_\_\_ percent for MBEs classified as women-owned may be set by the buying MEEC member. I will make a good faith effort to achieve the established goals for these TORP's.

OR

After having made a good faith effort to achieve the MBE participation goal stated in a TORP, I conclude I am unable to achieve it, I will state:

1. I intend to achieve MBE participation of \_\_\_\_\_ % and request a waiver of the remainder of the goal.

Within 10 business days of receiving notice that our firm is the apparent low bidder or the apparent awardee of a TORP, I will submit a written waiver request that complies with COMAR 21.11.03.11. I acknowledge that the MBE subcontractors/suppliers listed in the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that I intend to achieve.

2. I have identified the specific commitment of certified MBEs by completing and submitting an MBE Participation Schedule with bid or proposal.

3. I understand that if I am the apparent awardee of a task order where an MBE goal has been set by the MEEC member, I must submit the following documentation within 10 working days of receiving notice of the potential award for a specific task order or from the date of conditional award (per COMAR 21.211.03.10), whichever is earlier.

- (a) Outreach Efforts Compliance State (Attachment C)
- (b) Subcontractor Project Participation Statement (Attachment D)
- (c) MBE Waiver Request per COMAR 21.11.03.11 (if applicable)
- (d) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

I acknowledge that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore, not eligible for the TORP award. If the TORP contract has already been awarded, the award is voidable.

4. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.

I solemnly affirm under the penalties of perjury that the contents of this paper are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name, Title

\_\_\_\_\_

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PRICE PROPOSAL**

**APPENDIX C**  
**IT Software and Professional Services Agreement**

## SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT

This Master Software and Services Agreement (“Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the University System of Maryland /MEEC (“the University” or “USM/MEEC”), with offices at \_\_\_\_\_, and \_\_\_\_\_, (“Contractor”), with offices at \_\_\_\_\_, FEIN # \_\_\_\_\_.

### RECITALS

A. USM/MEEC has requested a proposal from \_\_\_\_\_ for the provision of certain software and consulting or other professional services to USM/MEEC associated with Learning Management Systems and related services.

B. \_\_\_\_\_ has demonstrated the system, provided a proposal dated \_\_\_\_\_, and provided clarifications to this proposal \_\_\_\_\_ in response to USM/MEEC's request. As a result, the parties enter into this Agreement to set forth their understanding;

NOW, THEREFORE, USM/MEEC and \_\_\_\_\_ agree as follows:

#### 1. NATURE OF THE AGREEMENT

This Agreement shall consist of the following documents (including any materials made part thereof), stated in the order of precedence:

- a. A Change Order to a Task Order Contract (TOC);
- b. A Task Order Contract done under this Master Agreement;
- c. A Change Document to the Master Agreement(as defined in Section 8 below);
- d. This portion of the Agreement consisting of \_\_\_\_\_ pages and any attachments, exhibits addenda or the like thereto whether or not physically attached (“Main Document”);
- e. Attachment A - the Software License and/or Professional Services Scope of Work dated \_\_\_\_\_ (*if applicable*)

#### 2. SCOPE OF THE AGREEMENT

2.1 \_\_\_\_\_ shall provide software, software maintenance, and software product support as well as professional/consulting services for a Learning Management System as set out in Attachment A.

2.2. The responsibilities of \_\_\_\_\_ under Sections 2.1 shall be subject to and in accordance with all provisions of this Agreement.

2.3 \_\_\_\_\_ shall be responsible for all obligations under this Agreement on its part, whether or not \_\_\_\_\_ performs such obligations by or through a subcontractor of other entity. For all purposes of this Agreement, \_\_\_\_\_ shall be responsible for the acts or omissions of its subcontractors or other entities providing goods or services under or with respect to this Agreement and for its or their representatives (both at any tier), whether or not permitted under this Agreement.

### 3. DEFINITIONS

In addition to the definitions ascribed elsewhere in this Agreement, the terms below will have the following meanings when and if used in this Agreement:

3.1 “Materials” means any and all software, Source Code, technology, plans, research, products, processes, services, and/or business operations including, without limitation, product specifications, data, know-how, formulae, equations, algorithms, software, samples, measurements, compositions, sequences, processes, designs, sketches, photographs, graphs, drawings, samples, working models, prototypes, inventions and ideas, information and documentation, test materials such as authored exams, books or reference materials, student response strings, and student's data and feedback and other information provided for and/or used in the completion of this Agreement.

3.2 “USM/MEEC or Buying MEEC member Materials” means those Materials supplied to \_\_\_\_\_ by or for USM/MEEC or a buying MEEC member and specifically includes Materials which would be confidential or proprietary in respect to a private entity; provided however, all Work, except for the software and customizations to the software, shall be deemed to be USM/MEEC’s or the Buying MEEC member’s Materials.

3.3 “Contractor-Owned Materials” means those Materials supplied by Contractor to USM/MEEC unless specifically stated otherwise in this Main Document or an Addendum. Contractor-Owned Materials shall include without limitation the Software (as defined in Attachment A).

3.4 “Student-Owned Materials” means any and all Materials supplied to Contractor by USM/MEEC students (including, but not limited to, biometrics and identifying information) accessing any and all services and products produced by Contractor for USM/MEEC under and as contemplated in this Agreement (“Students”).

3.5 “Intellectual Property Rights” shall mean (a) copyrights and copyright applications, including any renewals, in either the United States or any other country; (b) trademarks, service marks, trade names, and applications or registrations for any of the foregoing in the State of Maryland, United States or any other country; (c) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; (d) patents, patent applications, continuations, divisionals, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States or any other country and (e) any other right, title or interest in and to intellectual property as may be applicable to this Agreement.

3.6 “Inventions” means inventions, discoveries, concepts, and ideas, whether patentable or not, including but not limited to processes, methods, formulae, software, techniques, blueprints, schematics, drawings, data, formulae, know-how, compositions, designs, sketches, photographs, graphs, samples, working models or prototypes, original works of authorship, as well as improvements thereof or know-how related thereto.

3.7 “Services” means all work necessary to provide the service specified in the Addenda, which may include without limitation online hosting, development, installation, training, analysis, design, programming, testing, implementation, and consulting.

3.8 “Source Code” means the human-readable description of the structure and methods of operation of any software, including but not limited to, flowcharts, programmers’ notes, and such other materials as may be reasonably necessary for a competent programmer to modify and maintain such software.

3.9 “Work” means any and all deliverables required within a Scope of Work as well as the research, notes, data, computations, estimates, reports or other documents or work product related to such deliverables created by or produced by or for Contractor under this Agreement. It is agreed that Work shall not include the Licensed Software or the customizations contemplated (as defined in Attachment A).

3.10 Buying MEEC Member (also reference to as “Buying Member” or “Member”) – A member institution of MEEC that is in good standing and eligible to purchase under this Agreement.

#### 4. TERM OF AGREEMENT

4.1 The term of this Agreement (the “Term”) shall only from \_\_\_\_\_, 200\_\_\_\_\_ through \_\_\_\_\_. 200\_ unless otherwise extended or terminated as provided in this Agreement or as a matter of law.

4.2 USM/MEEC, at its sole discretion, may also elect to conduct trial programs and/or proof of concepts under this Agreement. Following the trial program and/or proof of concept, the USM/MEEC may, but is not required to, elect to fully deploy the LMS system with the vendor in a manner that serves its best interests. If USM/MEEC elects to continue with the full deployment of the LMS system, negotiations between USM/MEEC and the vendor regarding the requirements of the full deployment including all applicable royalties, fees, work plan, and appropriate timeline will occur. USM/MEEC makes no guarantee that such negotiations will occur.

4.3 USM/MEEC reserves the right to cancel or discontinue the Master Agreement or any Task Order purchase done under the Master Agreement at anytime during the term of the Master Agreement and/or Task Order, whichever is applicable, without penalty if deemed in its best interest. As well, USM/MEEC may elect, at its sole discretion, to procure the products and services in another manner as this Master Agreement is non-exclusive.

4.4 Any Task Order that commences during the term or terms of the Master Agreement may be completed under the terms and conditions of this Agreement even if the Agreement has been terminated and/or expired.

#### 5. TERMINATION

5.1 Termination for Default If the Contractor fails to fulfill its obligation under this Agreement, or any Task Order done under the Agreement, properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

5.2 Termination for Convenience The performance of work under this contract, or any Task Order done under this Agreement, 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.

#### 6. CONTRACTOR'S RESPONSIBILITIES

##### 6.1 Time is of the Essence

Contractor acknowledges and agrees that time is of the essence as to the production and delivery of all products and services hereunder.



## 6.2 Americans with Disabilities Act

Contractor assures USM/MEEC that it shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) as well as all applicable federal and state laws and regulations, guidelines and interpretations including but not limited to the National Rehabilitation Act Section 508 issued thereto.

## 6.3 Non-Discrimination in Employment

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.

## 6.4 Compliance with Laws

Contractor hereby represents and warrants that:

- A. 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;
- B. 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 Agreement;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

## 6.5 Quality Control

Contractor acknowledges and agrees to perform stringent quality control procedures suitable to the highest level of professional quality applicable to the production of the products and services required to be produced under this Agreement at every stage of work hereunder.

## 6.6 Project Management

Contractor shall assign \_\_\_\_\_ as its Account Manager (the buying MEEC members' point of contact) and \_\_\_\_\_ as its Single Point of Contact for the MEEC Executive Director. ( These positions shall be referred to as the "Contractor Account Manager" and "Contractor's Single Point of Contact"). Once designated these people may not change until Contractor, for good cause, (a) initially notifies USM/MEEC verbally to discuss the rationale for the change, and (b) once mutually agreed provides notification in writing. Removal from USM/MEEC's account for an assignment to another Contractor customer account will generally not be considered good cause. Termination of employment at Contractor is agreed to reason for change. Contractor will honor a written request from USM/MEEC or any buying MEEC member, for good cause, for a change of staff in the role of Account Manager or any other key person assigned to USM/MEEC's account. Major changes in Contractor's organization or personnel (other than the Account Manager or Single Point of Contact) shall be reported to USM/MEEC in writing as they occur.

## 7. USM/MEEC RESPONSIBILITIES

7.1 USM/MEEC agrees to make promptly available to Contractor throughout all work ordered under this Agreement buying MEEC member's staff knowledgeable about the work requested by the Member and its requirements, for the purpose of answering Contractor's questions. These staff generally include, but are not limited to, administrative contacts, support contacts, and a Member's Project Coordinator as defined below in Section 7.3. and specifically as may be provided in any Task Order Request.

7.2 USM/MEEC agrees that its members will release all essential specifications for the work hereunder to Contractor consistent with the delivery schedules outlined in the Task Order to prevent delays that could adversely affect Contractor's performance of the work.

7.3 USM/MEEC's buying MEEC Member will designate a staff member to act as coordinator ("Project Coordinator") between USM/MEEC Member and Contractor. Throughout the period of the Agreement, copies of all correspondence, work products, specifications, estimates and other materials prepared by Contractor should be directed to the Project Coordinator and also to any other USM/MEEC Member's personnel designated by the Project Coordinator. Direct contact or communication by Contractor with other USM/MEEC Members offices or any other entity concerning the Task Order shall be made only with the prior knowledge and concurrence of the Project Coordinator.

## 8. PAYMENT TERMS, PURCHASE ORDERS, AND CHANGE ORDERS

8.1 Payment will be made in accordance with the terms and conditions set forth in this Agreement or in accordance with a Task Order purchased under this Agreement. Contractor's fees for software licensing and professional services shall not exceed the rates set forth in the Contract per the Contractor's price proposal dated \_\_\_\_\_. (May be included as a separate attachment to the Contract.) The Buying MEEC Member's organization will be responsible for the processing of all payments to the Contractor.

### 8.2 Task Order Contract/Purchase Order

Contractor may receive a Task Order Contract and/or a Purchase Order for the project, signed by an authorized USM/MEEC Member employee as a prerequisite to the processing and payment of invoices under this Agreement or Task Order. It is agreed that the terms and conditions of the USM/MEEC Member's Purchase Order are not a part of this Agreement, but are a separate agreement between the parties. Unless amended by a Buying MEEC Member's Task Order Contract or Purchase Order, the terms and conditions of this Agreement apply.

### 8.3 Invoicing

8.3.1. Contractor will submit an invoice in US Dollars to USM/MEEC Buying Member which must contain the following information: state "Invoice" on the bill; reference the date indicated; type of billing (i.e., the deliverable); the Federal Employer's ID Number or Social Security Number; and additional information as may be specifically required elsewhere in this Agreement or the Buying MEEC Member's Task Order Contract or Purchase Order.

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

8.3.3. Contractor hereby agrees that, notwithstanding the provisions of State Finance and Procurement Article of the Annotated Code of Maryland, Title 15, Subtitle 1, interest on any payments due under the terms of this

Agreement shall not be payable unless such payments remain unpaid for more than seventy-five (75) days after receipt of a proper invoice and such payments shall accrue interest from the 61st day after receipt of a proper invoice.

#### 8.4 Change Orders

In the event that there is an amendment to this Agreement that USM/MEEC shall issue a Change Order modifying the Agreement. As well, in the event that there is an amendment to any Task Order Contract or Purchase Order done under this Agreement, the USM MEEC Buying MEEC member shall issue a Change Order modifying the Task Order or Purchase Order. In either case, the Change Order is a prerequisite to the processing and payment of invoices under this Agreement or any Task Order Contract in respect to an Amendment. It is agreed that the terms and conditions of any Task Order Change Order are not a part of this Agreement, but a separate agreement between the parties.

#### 8.5 Electronic Funds

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

### 9. OWNERSHIP AND PROPRIETARY RIGHTS

9.1 Contractor owns and retains all right, title and interest in Contractor-Owned Materials. USM/MEEC or Buying MEEC Member owns and retains all right, title and interest in USM/MEEC or Buying MEEC Member Owned Material. USM/MEEC Students own and retain all right, title and interest in USM/MEEC Student-Owned Material. Any and all modifications, enhancements, revisions to, or derivative works arising from USM/MEEC or Buying MEEC Member Owned Materials shall remain the exclusive property of USM/MEEC. Any and all modifications, enhancements, revisions to, or derivative works arising from Contractor-Owned Materials and software shall remain the exclusive property of Contractor, provided, however, that all enhancements requested by and/or specified by USM/MEEC or the Buying MEEC Member will be assigned to USM/MEEC or the Buying MEEC Member, unless specifically stated otherwise in the Task Order Scope of Work document.

9.2 Contractor acquires no rights of ownership in or to the USM/MEEC or Buying MEEC Member Owned Materials or the Student-Owned Materials; or anything that is provided to Contractor by USM/MEEC, Buying MEEC Member, or USM/MEEC Students, including but not limited to software and related documentation, student name and eligibility and that which is generated by the student, such as response strings, data, and feedback. Any modifications or enhancements to the foregoing, including those suggested or implemented by Contractor, shall belong to USM/MEEC or the Buying MEEC Member. Contractor agrees that its rights to use any such materials or data provided by USM/MEEC, including all USM/MEEC or Buying MEEC Member Owned Materials or Student-owned Material, is limited to such use as is necessary to permit Contractor to perform Services and obligations in this Agreement.9.3 USM/MEEC or the Buying MEEC Member has the responsibility for providing Contractor with the copyright notice language to appear on websites, delivered tests, and on any related practice and/or demonstration materials. Contractor will have the responsibility for ensuring that the copyright notice language provided to Contractor by USM/MEEC or the Buying MEEC Member will appear as provided on any applicable materials. Any copyright notice language or other language acknowledging Contractor's ownership or other legal rights of Contractor which appears on websites, delivered tests, and in any practice and/or demonstrational materials will be limited to such language as is necessary to protect Contractor's legal rights. Unless provided to Contractor by USM/MEEC or the Buying MEEC member, no language acknowledging the legal rights of any third party shall appear on materials without the prior written consent of USM/MEEC or the Buying MEEC Member.

9.3 Contractor agrees to indemnify and hold harmless and defend upon request USM/MEEC, the Buying MEEC Member, its officers, agents and employees with respect to any claim, action, cost or liability 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 Agreement and for a violation or breach of the provisions set forth in Sections 9 and 10 of this Agreement.

9.4 Notwithstanding anything in the Agreement to the contrary, any and all Work shall be the sole and exclusive property of USM/MEEC or the Buying MEEC Member. Notwithstanding the foregoing, the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by Contractor prior to, or acquired during, the performance of the Scope of Work shall be Contractor-Owned Material.

9.5 Upon USM/MEEC's or the Buying MEEC Member's request or upon the expiration or termination of this Agreement, Contractor shall deliver or return all copies of the Work to USM/MEEC or the Buying MEEC Member. 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.

9.6 Contractor and USM/MEEC intend this Agreement to be a contract for services 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 USM/MEEC, the Buying MEEC Member, 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. Contractor agrees to execute all documents and to perform such other proper acts as USM/MEEC or the Buying MEEC Member may deem necessary to secure for USM/MEEC and/or the Buying MEEC Member the rights in the Work.

## 10. PROPRIETARY AND CONFIDENTIAL INFORMATION

10.1 Contractor acknowledges and understands that in connection with this Agreement, 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, MEEC's, or the Buying MEEC Member's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by the University, USM/MEEC, the Buying MEEC Member, or USM/MEEC Students to Contractor, including without limitation information concerning the University's, MEEC's, or the Buying MEEC Member's business strategies, political and legislative affairs, students, employees, vendors, contractors, student records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, software and documentation, student materials, student name and other identifying information which is generated by the student, such as biometrics. 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.

10.2 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.

10.3 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 Agreement.

10.4 Contractor acknowledges and understands that USM/MEEC and its Buying Members are 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 USM/MEEC’s or the Buying MEEC Member’s employees. 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 USM/MEEC and the Buying MEEC Member would be obligated if the Confidential Information was in the possession or control of USM/MEEC and the Buying MEEC Member. 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. For the purpose of this Agreement, Contractor shall follow and be bound by the interpretation and application that the University gives to the Privacy Laws. If Contractor complies with the University’s interpretation and application of the Privacy Laws, then the University shall have no cause of action against Contractor under this Agreement if Contractor’s actions concerning the Confidential Information are found to be in violation of the Privacy Laws.

10.5 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, MEEC, and the Buying MEEC Member, and before disclosing such information shall allow USM/MEEC and/or the Buying MEEC Member reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

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

10.7 Contractor acknowledges that its failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause USM/MEEC and/or the Buying MEEC Member grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this Item 10 shall be a material breach of this Agreement.

10.8 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:

Executive Director  
Maryland Education Enterprise Consortium  
1450 South Rolling Road  
Baltimore MD 21227

AND

To the Buying MEEC Member’s Legal Office or designee

10.9 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (1) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (2) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (3) was independently developed by Contractor without violation of this Agreement, or (4) Contractor and USM/MEEC agree in writing to disclose. Each party 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 other’s information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

10.10 Contractor agrees to use Student-Owned Materials, USM/MEEC or Buying MEEC Member-Owned Materials and USM/MEEC’s or Buying MEEC Member’s Confidential Information only as necessary to perform its responsibilities under this Agreement, keep it confidential in accordance with this Agreement and use its best efforts to prevent and protect the contents of these materials, or any parts of them, from unauthorized disclosure. Further, Contractor will assure the strictest measures are taken

to protect the security and confidentiality of such information including controlled and audited access to any location where such confidential and proprietary data and materials reside while in the custody of Contractor and employing security measures to prevent system attacks (e.g., hacker and virus attacks).

10.11 Contractor will implement security measures at its offices and all other associated facilities in connection with Contractor software to ensure the strictest confidentiality of USM/MEEC and Buying MEEC Member's Owned Materials, USM/MEEC's and Buying MEEC Member's Confidential Information and all other confidential information and materials. These measures will include, without limitation, encryption, use of a sign-on and access privilege system and other measures described in this Agreement, and such other measures as Contractor deems necessary in its professional discretion. Unless otherwise provided by separate agreement, upon termination of this Agreement or upon earlier request by USM/MEEC or the Buying MEEC Member, Contractor shall return to USM/MEEC or the Buying MEEC Member, all USM/MEEC-Owned Materials, Buying MEEC Member Owned, USM/MEEC's or Buying MEEC Member's Confidential Information, all data, software provided to Contractor by USM/MEEC, Buying MEEC Member, student records, and any other proprietary information or materials that have not already been purged pursuant to this Agreement; alternatively and at USM/MEEC's or the Buying MEEC Member's option, Contractor shall destroy any or all of the aforementioned beyond recoverability. Contractor shall not retain any electronic or other copies of any of the foregoing referenced information or materials absent of prior written authorization from USM/MEEC.

10.12 USM/MEEC and its Buying Members will implement security measures at its offices and all other associated facilities to ensure the confidentiality of Contractor's confidential information and materials in manner like that provided by USM/MEEC and the Buying MEEC Member for its own information and materials identified as confidential under this Agreement. Unless otherwise provided by separate agreement, upon termination of this Agreement, USM/MEEC and the Buying MEEC Member shall return to Contractor all Contractor-Owned Materials, including software, Source Code, and/or documentation provided to USM/MEEC or the Buying MEEC Member by Contractor; alternatively and at Contractor's option, USM/MEEC and the Buying MEEC Member shall destroy any or all of the aforementioned beyond recoverability. USM/MEEC or the Buying MEEC Member shall not retain any electronic or other copies of any Contractor-Owned Materials or other Contractor Proprietary and Confidential Information absent of prior written authorization from Contractor.

10.13 Contractor will notify USM/MEEC and/or the Buying MEEC Member immediately of any actual or suspected breach of security with respect to confidential information. Contractor will notify USM/MEEC and/or the Buying MEEC Member immediately of any unusual circumstances surrounding the LMS system delivery, including but not limited to Contractor-based technical problems, power outage affecting authentication, suspicion concerning identity of person logging on, Contractor or Contractor's subcontractor system intrusions (e.g., attack by hacking, virus infection). Notifications to be made under this Section shall be made in the most expeditious manner possible (telephone with e-mail confirmation is preferred) to the appropriate project manager.

10.14 Neither party shall be obligated to maintain any information in confidence or refrain from use, if: (a) the information was lawfully in the receiving party's possession or was known to it prior to its disclosure from the disclosing party as shown by written records; (b) the information is, at the time of disclosure, or thereafter becomes, public knowledge without the fault of the receiving party; or (c) disclosure is required by subpoena or pursuant to a demand by any governmental authority.

Except as specifically permitted by this Agreement, Contractor acknowledges that any unauthorized use, reproduction or disclosure of USM/MEEC or the Buying MEEC Member's Proprietary and Confidential Information and Property would result in irreparable injury to USM/MEEC and/or the Buying MEEC Member and further agrees that there is no adequate remedy at law for any breach of its obligations hereunder and upon any such breach or any threat thereof by Contractor, USM/MEEC and/or the Buying MEEC Member will be entitled to appropriate equitable relief, including immediate injunctive relief and monetary damages resulting from material breach of the terms of this Section, as well as any other rights and remedies that may be available to USM/MEEC and/or the Buying MEEC Member by law.

## 11. EVALUATION AND ACCEPTANCE PROCEDURE FOR TASK ORDERS

11.1 Upon completion and delivery of each deliverable for the Task Order/Purchase by CONTRACTOR, USM/MEEC Buying Member will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Payments, in accordance with Section 8 of this Agreement will be based on either (i) the completion/ delivery of a deliverable for a given Task Order/Purchase by CONTRACTOR and acceptance by USM/MEEC Buying Member of each Task Order/Purchase deliverable or (ii) as provided for the specific assignment. CONTRACTOR will demonstrate to USM/MEEC Buying Member that the Task Order/Purchase deliverable has been completed or has occurred and will provide USM/MEEC Buying Member with written notice of the same.

11.2 Within the time period specified, or if not specified, then within thirty (30) business days of receipt by USM/MEEC Buying Member of a scheduled task order/purchase deliverable from CONTRACTOR, USM/MEEC Buying Member shall determine whether such deliverable Materially Conforms to the specifications defined in this Agreement. As used herein, the term "Materially Conforms" means that the deliverable is ready to be used in production and meets or exceeds its intended functionality and performance. If the deliverable Materially Conforms to the specifications, then USM/MEEC's Buying Member's Project Coordinator will provide written confirmation to CONTRACTOR that the deliverable is accepted.

11.3 If the deliverable does not Materially Conform, USM/MEEC's Buying Member's Project Coordinator will immediately notify CONTRACTOR with a written list of deficiencies. CONTRACTOR, at no additional cost to USM/MEEC Buying Member, shall thereafter make all appropriate and necessary fixes to the deliverable and return it to USM/MEEC Buying Member within the time period specified, or if not specified, then within ten (10) business days for further testing by USM/MEEC Buying Member or time frame agreed to in writing by USM/MEEC's Buying Member's Project Coordinator. If the deliverable again fails to Materially Conform then this same process will be repeated one more time. If the deliverable fails to Materially Conform to the specifications after delivery for the second time then USM/MEEC Buying Member may, at its sole option, declare CONTRACTOR in material breach of the Task Order Contract/Purchase and begin the termination process as defined in Section 5 of this Agreement. USM/MEEC Buying Member may also, at its sole discretion, (a) further extend the timeframe for cure and (b) extend the warranty period, if applicable, or (c) begin the termination process for the Task Order/Purchase as defined in Section 5. of this Agreement. If USM/MEEC Buying Member does not elect to terminate the Task Order/Purchase 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. CONTRACTOR acknowledges that all out of pocket expenses and travel costs incurred by it or on its behalf in connection with any failure of representations or warranties shall be solely its responsibility.

## 12. REPRESENTATIONS AND WARRANTIES

12.1 Each party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

### 12.2 Contractor Warrants and Represents

A. That it shall perform all of the work in a professional manner in accordance with the highest industry standards for software development and services, and that the software development and services will conform to the specifications contained in the applicable Task Order/Purchase.

B. Contractor is the owner or authorized user of Contractor software and all of its components, and Contractor software and all of its components do not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.

C. Contractor software and its components are equipped to prevent system attacks (e.g., hacker and virus attacks) and unauthorized access to institutional or candidate confidential information.

D. Contractor software is free of any and all "time bombs," computer viruses, copy protect mechanisms or any disclosed or undisclosed features which may disable Contractor software or render it incapable of operation (whether after a certain time, after transfer to another central processing unit, or otherwise).

12.3 USM/MEEC warrants and represents that it has right to use and to provide to Contractor any materials provided by USM/MEEC and/or the Buying MEEC Member and such use does not violate any patent, trademark, trade secret, copyright, or any other right of ownership of any third party.

#### 12.4 Warranty Exclusions

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, BOTH PARTIES EXPRESSLY EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION ANY WARRANTY THAT THE CONTRACTOR –OWNED MATERIALS, OR USM/MEEC-OWNED MATERIALS ARE ERROR-FREE OR COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS.

### 13. INSURANCE

13.1 Contractor shall secure, and shall require that subcontractors secure, pay the premiums for and keep in force until the expiration of this agreement, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by contractor under this agreement inclusive of the requirements below:

- 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 \$1,000,000 products/completed operation
- Not less than \$1,000,000 general aggregate
- Workmen’s compensation per statutory requirements
- Professional liability insurance in an amount not less than \$1,000,000

Limits of insurance may be achieved either singularly or by combination of applicable coverages.

13.2 All policies for liability protection, bodily injury or property damage and fiduciary bonding must specifically name on its face USM/MEEC and its eligible MEEC Members as an additional named insured with respect to operations under this Agreement and premises occupied by Contractor, provided, however, with respect to 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 USM/MEEC and the Buying MEEC Member and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees, or guests of USM/MEEC and the Buying MEEC Member.

13.3 Each insurance policy shall contain the following endorsements: “It is understood and agreed that the Insurance Company shall notify in writing Procurement Officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy”. Upon the request of the Procurement Officer, a certified true copy of each policy of insurance including the above endorsement manually countersigned by an authorized representative of the insurance company shall be furnished to the Procurement Officer. 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”.



## 14. INDEMNIFICATION

14.1 In addition to the obligations to indemnify set forth elsewhere in the Agreement, Contractor will indemnify and hold harmless USM/MEEC, the Buying MEEC Members, their employees, contractors, and agents, from any and all loss, damage, injury, or liability arising directly out of Contractor's operations under this Agreement, including operation of equipment or vehicles, and wrongful or tortious acts of omission, commission, or negligence by Contractor, its employees, contractors, or agents when engaged in company operations under this Agreement, and including the disclosure of user personally identifiable data, either during the term of this Agreement or at any time thereafter, if such disclosure occurred as a result of negligence by Contractor, its employees, contractors, or agents, and provided that USM/MEEC and/or the Buying MEEC Member: (a) notifies Contractor promptly in writing of any such claim or proceeding, (b) reasonably cooperates with Contractor in defending any such claim or proceeding, and (c) in no event shall USM/MEEC or the Buying MEEC Member settle any such claim without Contractor's prior written approval.

14.2 Contractor will defend and indemnify USM/MEEC and the Buying MEEC Member, or settle any suit, claim or proceeding (collectively, a "Claim") brought against USM/MEEC and/or the Buying MEEC Member alleging that Contractor software infringes any U.S. patent, copyright, trademark, or other proprietary right, and shall pay any final judgment against USM/MEEC and/or the Buying MEEC Member, including all court awarded costs, damages and expenses, which result from any such claim, provided that USM/MEEC and/or the Buying MEEC Member: (a) notifies Contractor promptly in writing of any such claim or proceeding, and (b) reasonably cooperates with Contractor in defending any such claim or proceeding.

14.3 If USM/MEEC's or the Buying MEEC Member's use of Contractor's software or Services becomes, or in Contractor's opinion is likely to become, enjoined as a result of a claim pursuant to this Section, Contractor, at Contractor's expense, shall either procure USM/MEEC and/or the Buying MEEC Member's the right to continue using the software or Services, or replace or modify the same so that it becomes non-infringing (provided replacement or modified software or Services have substantially comparable functionality to the original software or Service) or, in the event performing the foregoing options are not commercially reasonable, refund to USM/MEEC and/or the Buying MEEC Member the fees paid for the particular software or Services out of which the claim arose.

14.4 USM/MEEC and its Buying MEEC Members shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this Agreement.

## 15. SOFTWARE ESCROW

15.1 If CONTRACTOR licenses software to USM/MEEC and/or any Buying MEEC Member under this Agreement, Parties may if required, execute one or more agreements to create an escrow for the benefit of USM/MEEC and/or the Buying MEEC Member (collectively the "Escrow Agreement"). The cost of the Escrow account shall be borne by USM/MEEC or the Buying MEEC Member.

15.2 CONTRACTOR, as an obligation under this Agreement, shall perform its obligations under the Escrow Agreement.

## 16. LIMITATION OF LIABILITY

NEITHER USM/MEEC NOR THE BUYING MEEC MEMBER NOR CONTRACTOR SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, AND LOSS OF GOODWILL, WHETHER IN AGREEMENT OR IN TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. EXCEPT AS PROVIDED FOR IN SECTIONS “10. PROPRIETARY AND CONFIDENTIAL INFORMATION” AND “14. INDEMNIFICATION” OF THIS AGREEMENT. CONTRACTOR’S LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY USM/MEEC BUYING MEMBERS UNDER THIS AGREEMENT DURING THE TERM OF THIS AGREEMENT OR THE COSTS INCURRED BY USM/MEEC BUYING MEMBERS FOR OBTAINING SUBSTITUTES FOR THE GOODS AND SERVICES NOT PROVIDED BY CONTRACTOR IN ACCORDANCE WITH THIS AGREEMENT UP TO A CAP OF \$500,000 US DOLLARS.

17 MISCELLANEOUS TERMS

17.1 Publicity/Use of Name and Logo

A. Contractor is authorized to identify USM/MEEC as a party to this Agreement for the purpose of identifying USM/MEEC as a customer to potential customers. However, any other use of USM/MEEC's of a Buying MEEC Member's name promotionally or otherwise in connection with Contractor's business or the subject matter of this Agreement is prohibited without the prior written consent of USM/MEEC or the applicable Buying MEEC Member.

B. Intentionally Omitted

C. This Agreement does not include a trademark license. Except as allowed by law for limited informational purposes, USM/MEEC or any of its Buying MEEC Members grants no rights to use any of its trademarks or service marks, for any purpose, without the prior and explicit written permission of USM/MEEC or the Buying MEEC Member, whichever is applicable. Under no circumstances does USM/MEEC or any of its Buying MEEC Members grant the right to use its corporate logos or signature except in connection with the products or services that are the subject matter of this Agreement or any related products or services.

D. Any violation of this Section 17.1 will be considered a material breach of this Agreement and grounds for its immediate termination in USM/MEEC's sole discretion, Any violation of this Section 17.2 will be considered a material break of any Task Order Agreement/Purchase entered into by a Buying MEEC Member and grounds for its immediate termination at the Buying MEEC Member's sole discretion.

17.2 Notices

Notices under this Agreement 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:

If to USM/MEEC: 3501 University Boulevard East, Suite ICC-3120  
Adelphi, Maryland 20783 USA  
Attn: Valerie Rolandelli  
*Assistant Vice President of Strategic Contracting*

If to Contractor: \_\_\_\_\_:

17.3 Delays and Extension of Time

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 Agreement. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of 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 Agreement with the State or USM/MEEC, 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 Contractor or the subcontractors or suppliers. If Contractor is unable to perform its obligations under this Agreement for ten (10) days due to a Force Majeure, then USM/MEEC may terminate this Agreement. Termination will occur according to Section 5 of this Agreement. This paragraph is also applicable to any Task Order Contract and/or purchase done under this Agreement. In the case of Task Order Contracts and/or purchase "USM/MEEC" is replaced with "Buying MEEC Member".

#### 17.4 Suspension of Work:

The Procurement Officer of the applicable MEEC Member unilaterally may order 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/MEEC or the Buying MEEC Member.

#### 17.5 No Waiver

The failure of either party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provisions or any other provisions.

#### 17.6 Dispute Resolution

A. Contractor and USM/MEEC and, for Task Orders/purchases its Buying Members, agree to work in good faith to resolve between them all disputes and claims arising out of or relating to this Agreement, the parties' performance under it, or its breach. Both Contractor and USM/MEEC and/or its Buying MEEC Members will each designate an officer or other management employee with binding authority to meet in good faith and attempt to resolve the dispute. During their discussions, each party will honor the other's reasonable requests for information relating to the dispute or claim. Failure to do so, shall not be a breach of this Agreement but shall indicate that the parties are unable to resolve their dispute.

B. If the Parties are unable to resolve the dispute within thirty (30) days after referral to them, the Disputes process outlined below will be followed:

- (1) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Agreement that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- (2) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
- (3) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.
- (4) When a claim cannot be resolved by mutual agreement, Contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.
- (5) Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(6) The procurement officer shall render a written decision on all claims within 180 days of receipt of Contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the University.

(7) The procurement officer's decision shall be final and conclusive unless Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

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

#### 17.7 Retention of Records

Contractor shall retain and maintain all records and documents relating to this Agreement 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.

#### 17.8 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 Agreement, 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.

#### 17.9 Contingent Fee Prohibition

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 Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

#### 17.10 Financial Disclosure

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.

#### 17.11 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.

#### 17.12 Anti-Bribery

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.

### 17.13 Ethics

This Agreement is cancelable in the event of a violation of the Maryland Public Ethics Law by Contractor or any USM/MEEC or Buying MEEC Member's employee in connection with this Agreement.

### 17.14 Multi-Year Contracts Contingent Upon Appropriations

A. 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 Agreement succeeding the first fiscal period, this Agreement 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 USM/MEEC's rights or Contractor's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both Contractor and USM/MEEC from future performance of the Agreement, but not from their rights and obligations existing at the time of termination.

B. Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. USM/MEEC shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

### 17.15 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 Agreement are applicable to this Agreement.

### 17.16 Survival After Expiration or Termination

Notwithstanding the expiration or termination of this Agreement or any renewal period hereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or termination will survive including, without limiting the foregoing, the following sections:

- A. Ownership and Proprietary Rights, Section 9
- B. Proprietary and Confidential Information, Section 10
- C. Representations and Warranties, Section 12
- D. Indemnification, Section 14
- E. Limitation of Liability, Section 16

### 17.17 Maryland Law Prevails

The laws of the State of Maryland shall govern the interpretation and enforcement of this Agreement.. Any legal actions arising under this Agreement will be instituted only in the courts of the State of Maryland. As specifically provided by MARYLAND ANNOTATED CODE, CL, SECTION 21-104, the parties agree that computer software purchases made under this agreement shall not be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted in Maryland under Title 21 of the Commercial Law article of the Maryland Annotated Code, as amended from time to time. This agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland

### 17.18 Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.

#### 17.19 Section Headings

The heading appearing at the beginning of the several sections making up this Agreement have been inserted for identification and reference purposes only and will not be used in the construction and interpretation of this Agreement.

#### 17.20 Remedies

All rights conferred under this Agreement or by any other instrument or law will be cumulative and may be exercised singularly or concurrently.

#### 17.21 Subcontracting and Assignment

A. Except as explicitly set forth in this Agreement, Contractor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of the University nor may Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of USM/MEEC. Such written approval will be in the form of a modification to this Agreement. The University shall not be responsible for the fulfillment of Contractor's obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that USM/MEEC deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Agreement, and shall be subject to liability to USM/MEEC for acts and omissions of subcontractors.

B. Contractor agrees that all Services provided by Contractor under this Agreement and the Addenda will be performed by employees or consultants or subcontractors of Contractor who have executed work-for-hire agreements with or who have assigned their work to Contractor as appropriate. Contractor shall only engage consultants or subcontractors who have agreed to comply with Sections 9 and 10 of this Agreement as if they were a party hereto. Contractor and USM/MEEC agree that USM/MEEC is a third party beneficiary of such engagement agreements and USM/MEEC has the right, but not the obligation, to enforce such engagement agreements in its own name. Contractor acknowledges and agrees that it is responsible under this Agreement for the acts and omissions of its consultants.

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

#### 17.22 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.

#### 17.23 Contract Integration and Modification

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

#### 17.24 Relationship of the Parties

Each party is acting as an independent contractor and not as employee, agent, partner, or joint venturer with the other party for any purpose. Except as provided in this Agreement, neither party will have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

#### 17.25 Business Continuity Plan

Contractor represents and warrants that it currently has certain business continuity plans in place throughout its organization that will be used in case of a disaster or other event that could result in the interruption of Contractor's capability to perform its obligations to USM/MEEC under this Agreement. Contractor agrees that its plans include reasonably prudent back-up business resumption and disaster recovery; that it continually maintains its business continuity plans to ensure that they remain current. Contractor further agrees to inform USM/MEEC immediately in the event it suffers a disaster or business interruption. Contractor acknowledges that USM/MEEC, at its option, may regard Contractor's failure to comply with the requirements in this Section as a material breach of this Agreement, and that, in such event, USM/MEEC may pursue all available legal remedies, including injunctive relief and damages compensating USM/MEEC for any loss of work that USM/MEEC may suffer as the direct result of Contractor's breach of the representations and warranties set forth in this Section.

#### 17.26 Prohibition on Gifts and Gratuities

Contractor warrants that it has not offered or given, and will not offer or give to any employee or representative or family member of an USM/MEEC or a Buying MEEC Member employee a payment, gratuity, personal service, entertainment, or gift, other than novelty advertising items of a nominal value (i.e., pens, pencils, calendars, writing pads, clipboards, cups). Legitimate business-related activities (i.e., site inspections, business symposiums, business meals and other Contractor functions) are allowed. Any other offerings may be construed as Contractor's attempt to improperly influence decisions at USM/MEEC and/or the Buying MEEC Member. Contractor agrees that USM/MEEC may, by written notice to Contractor, terminate this Agreement if USM/MEEC determines that Contractor has violated this provision. Contractor agrees that a Buying MEEC Member may, by written notice to Contractor, terminate any Task Order Contract/Purchase if Buying MEEC Member determines that Contractor has violated this provision.

17.27 Taxes Contractor will be responsible for all taxes that arise from its performance under this Agreement, except for any tax based on USM/MEEC's income, if applicable.

17.28 Insolvency In addition to and not in conflict with the provisions in Section 5 of this Agreement, either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

18. ENTIRE AGREEMENT The parties agree that this Agreement, including without limitation any Addenda, Attachments, and Exhibits thereto, constitutes the complete and exclusive statement of the agreement between them as to the specific subject matter hereof..

IN WITNESS WHEREOF, the parties hereby intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

**University System of Maryland/MEEC**

**NAME OF CONTRACTOR**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_ William E. Kirwan \_\_\_\_\_

Name \_\_

Title\_ Chancellor \_\_\_\_\_

Title\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



ATTACHMENT A

ADD attachments as necessary to describe scope of services, software, and pricing for each



**APPENDIX D**  
**ELECTRONIC FUND TRANSFER SCHEDULE**

**APPENDIX D**  
**SCHEDULE EFT**  
**Payments to Contractors by Electronic Funds Transfer (EFT)**

If the annual dollar value of this contract will exceed \$500,000.00, the Bidder/Offeror is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants the Contractor an exemption.

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

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

<http://compnet.comp.state.md.us/gad/agencyinfo/agencyeft.asp>

**APPENDIX E**

**MINORITY BUSINESS ENTERPRISE INFORMATION**

**EXHIBIT TO SOLICITATION  
STATE OF MARYLAND  
UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE  
MINORITY BUSINESS ENTERPRISE PARTICIPATION**

**PURPOSE**

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the Invitation for Bids or Request for Proposals. MBE performance must be in accordance with this Exhibit, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

**MBE GOALS AND SUB GOALS**

A MBE subcontract participation goal of   n/a   percent of the total contract dollar amount has been established for this Master Agreement procurement, however, individual buying MEEC members may set a goal on a specific Task Order done under the Master Agreement. By submitting a response to this solicitation, the bidder or offeror agrees that they understand this and will make a good faith effort to achieve such goals established at the Task Order Request for Proposal level and that the resulting Task Order Contract will be performed by certified minority business enterprises.

OR

An overall MBE subcontract participation goal of   n/a   percent of the total contract dollar amount has been established for this procurement. This dollar amount includes:

- A sub goal of   n/a   percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
- A sub goal of   n/a   percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as African American-owned businesses.

By submitting a response to this solicitation, the bidder or offeror agrees that these dollar amounts of the contract will be performed by certified minority business enterprises as specified.

- ◆ A prime contractor – including an MBE prime contractor – must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
- ◆ A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.

## **SOLICITATION AND CONTRACT FORMATION**

◆ A bidder or offeror must include with its bid or offer:

(1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment A) whereby the bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.

(2) A completed MBE Participation Schedule (Attachment B) whereby the bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder or offeror shall specify the price and/or the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

**If a bidder or offeror fails to submit Attachment A and Attachment B at with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.**

◆ Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

- (1) Outreach Efforts Compliance Statement (**Attachment C**)
- (2) Subcontractor Project Participation Statement (**Attachment D**)
- (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
- (4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

**If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.**

## **CONTRACT ADMINISTRATION REQUIREMENTS**

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## **ATTACHMENTS**

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with the price proposal) (See Appendix B)
- B. MBE Participation Schedule (must be submitted with the price proposal) (See Appendix B)
- C. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D. Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)



**Attachment B  
MBE Participation Schedule  
(for submission with TORP)**

**\*\*\*\*\*EFFECTIVE OCTOBER 1, 2004\*\*\*\*\***

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	Total Contract Amount \$
<b>List Information For Each Certified MBE Subcontractor On This Project</b>	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	

**USE ATTACHMENT B CONTINUATION PAGE AS NEEDED**

**SUMMARY**

TOTAL MBE PARTICIPATION: \_\_\_\_\_ % \$ \_\_\_\_\_

TOTAL AFRICAN-AMERICAN MBE PARTICIPATION: \_\_\_\_\_ % \$ \_\_\_\_\_

TOTAL WOMAN-OWNED MBE PARTICIPATION: \_\_\_\_\_ % \$ \_\_\_\_\_

<p>Document Prepared By: (please print or type) Name: _____ Title: _____</p>
--

Attachment B, continued

List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Dollar Amount or Percentage of Total Contract	





## APPENDIX F

### ELIGIBLE MEEC PARTICIPATING MEMBERS

**Only members of MEEC in good standing are permitted to purchase off of the MEEC Agreements.** All Maryland entities defined as “education eligible” are permitted to be members of MEEC. The list of current MEEC members is on the website [www.meec-edu.org](http://www.meec-edu.org) as well as the criteria for “education eligible”. This list of members is subject to change throughout the life of the resulting contract(s).