

April 20, 2018

TO: All Prospective Proposers  
UMB Utility Service Study  
IFB # 17-381 PS

FROM: Putu Sayeh  
University of Maryland Baltimore, Construction Procurement

RE: **NAME OF PROJECT:** UMB Utility Service Study  
**UMB PROJECT NUMBER:** 17-381 PS

The following amends the above referenced solicitation documents and is issued as Addendum #1 dated 4/20/2018. The date and time for the **Pre Bid Meeting is Tuesday 24 April 2018 at 2:00 p.m.** Receipt of this addendum is to be acknowledged by completing the enclosed "Acknowledgement of Receipt of Addenda" form and including it with your bid price.

**Modification to the Solicitation:**

**Add: "Schedule 2" to the Consulting Agreement to the solicitation**

**Delete: "Schedule B" Solicitation Terms & Condition from the solicitation**

END OF ADDENDUM #1 DATED 4/20/2018

Enclosed: Addenda Acknowledgment Form  
Schedule 2 to the Consulting Agreement

**IFB NO.:** 17-381 PS

**IFB FOR:** UMB Utility Service Study

**BID DUE DATE/TIME:** May 11, 2018 at or before 2:00 p.m.

**NAME OF BIDDER:** \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

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

Addendum No.   1   dated   4/20/2018  

Addendum No.            dated                   

Addendum No.                    dated                   

Addendum No.                    dated                   

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

## SCHEDULE 2 TO CONSULTING AGREEMENT FOR ADMINISTRATIVE OR TECHNICAL SERVICES

### Explanation of Terms

As used in Schedule 2, "Contractor" means "Consultant"; "State" means UMB, as an individual State agency, or all State agencies and units collectively, as required by the context of the use; "Contract" means the Agreement to which this Schedule 2 is attached; and "Work" means the work of the Consultant required to complete the Project.

### **7.1 Non-Hiring of Employees**

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

### **7.2 Disputes**

Pending Resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

### **7.3 Maryland Law Prevails**

The laws of Maryland shall govern the interpretation and enforcement of this Contract.

### **7.4 Nondiscrimination in Employment**

The Contractor agrees: 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 disability of a qualified individual with a disability and 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."

### **7.5 Contingent Fee Prohibition**

The contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, 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."

### **7.6 Multi-Year Contracts Contingent Upon Appropriations**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time

of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first."

**7.7 Termination for Default**

If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. 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."

**7.8 Termination for Convenience**

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

**7.9 Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers."

**7.10 Modifications**

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

**7.11 Liquidated Damages**

Mandatory provision for those contracts deemed appropriate by the procurement officer.

**7.12 Variations in Estimated Quantities**

Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay items varies more than twenty-five percent (25%) above or below the estimated quantity stated in this Contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

**7.13 Suspension of Work**

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the University."

**7.14 Pre-existing Regulation**

The regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

**7.15 Payment of State Obligation**

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

**7.16 Financial Disclosure**

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

**7.17 Political Contribution Disclosure**

The Contractor shall comply with Article 33, Sections 14-101 through 14-104 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws 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. The statement shall be filed with the State Administrative Board of Election Laws:

- a. before a purchase or execution of a lease or contract by the University, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
- b. if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6-month period ending July 31.

**7.18 Retention of Records**

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the University hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the University, including the procurement officer or designee, at all reasonable times.

**7.19 Compliance with Laws**

The 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 moneys 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 the contract;

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

#### **7.20 Cost and Price Certification**

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

a. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

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

#### **7.21 Truth-In-Negotiation Certification**

The Contractor by submitting cost or price information, including wage rates or other actual unit costs, certifies to the best of its knowledge, information and belief, that:

a. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

b. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The University's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

c. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

#### **7.22 Contract Affidavit**

The attached Contract Affidavit must be signed as part of this Agreement.

### **7.23 Anti-Bribery**

The Contractor warrants that neither it nor any of its officers, directors, or partners, nor any employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspired to bribe, under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which could constitute bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

### **7.24 Intellectual Property**

Contractor agrees to defend upon request and indemnify and save harmless UMB, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Agreement.

### **7.25 Mandated Contractor Reporting of Suspected Child Abuse & Neglect**

The University of Maryland, Baltimore (UMB) and the University System of Maryland (USM) are committed to protecting the safety and welfare of children who come into contact with the UMB community. Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. *See* Maryland Code Annotated, Family Law Article, Sections 5-701 through 5-708. A copy of the above-referenced USM/UMB Policy and Procedures are available at:

[http://www.umaryland.edu/offices/accountability/child\\_abuse.html](http://www.umaryland.edu/offices/accountability/child_abuse.html). The Policy and Procedures are incorporated herein.

Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – *Policy on the Reporting of Suspected Child Abuse and Neglect*, as well as the UMB *Procedures for Reporting Suspected Child Abuse and Neglect*. Specifically, contractors performing work on campus must report suspected child abuse or neglect orally or in writing to: (a) the local department of social services or law enforcement agency; and (b) the University President’s Designee (i.e. the UMB Chief Accountability Officer), if the suspected child abuse or neglect: (i) took place in UMB facilities or on UMB property; (ii) was committed by a current or former employee or volunteer of the USM; (iii) occurred in connection with a UMB sponsored, recognized or approved program, visit, activity, or camp, regardless of location; or (iv) took place while the victim was a registered student at UMB.

UMB reserves the right to terminate this contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of UMB, termination is necessary to protect the safety and welfare of children who come into contact with the UMB community.

### **7.26 Changes**

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



7.27 **Ethics**

This Agreement is cancelable in the event of a violation of the Maryland Public Ethics Law by the Consultant or any University employee in connection with this Agreement.

7.28 **Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. ("HIPAA") and Maryland Confidentiality of Medical Records Act (Annotated Code of Maryland, Health – General Article 4-301 et seq. ("the Act"))**

Consultant acknowledges that the University is a HIPAA hybrid covered entity.

Consultant agrees that Consultant's access to and use of protected health information (as that term is defined by HIPAA), if any, under this Agreement will be conducted in accordance with the requirements of the Act and HIPAA, including the terms of a HIPAA Business Associate Agreement if so required by the University. Such Business Associate Agreement is either attached hereto as Schedule H or Consultant shall promptly execute such Business Associate Agreement upon the University's request.

Consultant shall also cause any subcontractor, agent, or party under Consultant's direction or control that is participating in this Agreement to promptly execute a standard HIPAA Business Associate Agreement if so requested by the University.