

AE SOLICITATION
DESIGN SERVICES
FOR RENOVATION OF NEWELL AND RICHMOND HALLS
AT TOWSON UNIVERSITY

BY THE UNIVERSITY OF MARYLAND, BALTIMORE
SOLICITATION #2009-32 MM

ISSUED: August 26, 2009

PRE-PROPOSAL MEETING: **Friday, September 4, 2009, at 11:00 a.m.**
Towson University (See TU Campus Map:
<http://www.towson.edu/main/maps/>
Location: Towson University Field House
Minnegan Room #306, Towson, Maryland 21252

INITIAL TECHNICAL
PROPOSAL DUE DATE: Wednesday, September 16, 2009, at 2:00 p.m.
UMB PROCUREMENT SERVICES
220 Arch Street, Room 02-100
Baltimore, Maryland 21201

PROCUREMENT/ISSUING
OFFICE: UMB Procurement Services
University of Maryland, Baltimore
220 Arch Street, Room 02-100
Baltimore, MD 21201

SPECIAL ACCESS: Anyone requiring special assistance in obtaining a copy of the solicitation, in attending a pre-proposal conference or in delivering a proposal are requested to contact the Issuing Office listed in Section 100 at least 48 hours in advance.

**AE SOLICITATION
FOR
RENOVATION OF NEWELL AND RICHMOND HALLS
AT TOWSON UNIVERSITY**

**BY THE UNIVERSITY OF MARYLAND, BALTIMORE
AE SOLICITATION #2009-32 MM**

TABLE OF CONTENTS

<u>SECTION #</u>	<u>DESCRIPTION</u>
00100	INSTRUCTIONS TO PROPOSERS
00200	INFORMATION AVAILABLE TO PROPOSERS
00300	PROPOSALS, EVALUATION AND FORMS
00400	SCOPE OF WORK
	- PROJECT OVERVIEW/GENERAL PROVISIONS - SUMMARY AE SERVICES
ATTACHMENT A:	The following forms are to be submitted by each proposer as indicated in the solicitation documents herein: - MBE Forms - Attachment A and B - Bid/Proposal Affidavit - Professional Liability Insurance Form - Registration Documentation Form - Acknowledgement of Receipt of Addenda Form (if applicable)
ATTACHMENT B:	THE following forms are to be submitted/signed by the successful firm: - Contract Affidavit Form - MBE Schedule for Participation - University's AE Contract (SFA-1)
ATTACHMENT C:	TOWSON UNIVERSITY Campus Map
DOCUMENTS PACKAGED SEPARATELY:	Project Program TU Design Standards

SECTION 00100

I. INSTRUCTIONS TO PROPOSERS FOR THE ARCHITECT/ENGINEER (A/E) CONTRACT

A. SUMMARY:

1. The objective of this Request for Proposal (RFP) is for Towson University ("Client"), a constituent institution of the University System of Maryland ("USM"), represented by the University of Maryland, Baltimore ("University"), another USM constituent institution, to secure professional architectural/engineering services during design and construction of the Renovation of Newell and Richmond Halls ("Project") in Towson, Maryland. The Project is to be carried out at the expense of Client, and not at the expense of University, pursuant to agreements between the University and the Client. The Client has designated the University to represent the Client with regard to award and administration of the AE contract. A representative of the University is the Procurement Officer for this solicitation and for the resulting contract.
2. The University of Maryland, Baltimore (herein referred to as the University) is seeking proposals for services from A/E firms for the design of the renovation of Newell and Richmond Halls (a.k.a. the Project) located on the campus of Towson University [see Attachment C for a TU campus map on which the project location is designated]. The Project requires an A/E consultant team that specializes in renovation and upgrades of historic structures based on the available budget.

The Newell/Richmond project is a renovation of the exterior envelope of the two buildings to include, but not be limited to windows, masonry repairs, copper gutters, and a slate roof replacement. (see Project Program for the complete details).

3. The A/E will be required to provide complete design services outlined; specifically, Schematic Design, Design Development, Construction Documents, Bidding, Construction Administration and Post Construction as well as any other identified special services (see Sections 00400 of this solicitation and the Project Program for further details). The A/E team is to include the following:

Architect including Interior Designer;
Historic Preservation Specialist
Sustainable Energy Engineering Specialist
Mechanical (HVAC, HVAC Controls, Energy Analyst, Fire Protection and Plumbing) Engineer;
Electrical Engineer including Lighting Specialist;
Structural Engineer;
Site Civil Engineer; and,
Cost Estimator

The University anticipates using the Construction Management at Risk (CM at risk) contract method for this project. The CM (i) will be providing pre-construction

services inclusive of cost estimating, value engineering, and constructability review during the design phases and (ii) will be responsible for constructing the Project during the construction phase. (A copy of the CM solicitation document will be available to shortlisted A/E firms from the University's Procurement Services website: www.procurement.umaryland.edu .)

4. UMB will execute the contract and a UMB procurement official will be the Procurement Officer for the contract, and will represent the Client in contract administration. If the Procurement Officer authorizes any claim against the AE firm, the claim will be asserted on behalf of the Client. Claims asserted by the AE must be asserted against the Client and will be resolved by the Procurement Officer on behalf of the Client.

B. INSTRUCTIONS FOR SUBMITTAL OF PROPOSALS:

For detailed information on preparation and submittal of proposals see Section 00300 "Proposals, Evaluation, Forms".

C. ISSUING OFFICE: The Issuing Office is:

University of Maryland, Baltimore
Office of Procurement Services
220 Arch Street, Room 02-100
Baltimore, Maryland 21201

Attn: Mary McGlasson
410-706-1558
Fax: (410) 706-8577
mmcglasson@af.umaryland.edu

1. The Issuing Office shall be the **sole** point of contact for the Towson University Project for purposes of the preparation and submittal of proposals in response to this solicitation.
2. All questions on this procurement are to be directed solely to the Issuing Office.
3. The University is acting on behalf of Client, which is solely liable for payments due the AE under the contract.

D. PRE-PROPOSAL CONFERENCE:

1. A **Pre-Proposal Conference** and Site Visit (exterior only) will be held on Friday, September 4, 2009, at 11:00 a.m. at TU's Field House, Minnegan Room #306, Towson, MD 21252. Parking will be available at the Towson Center Arena Lot 20. A Greeter will be available to hand out parking permits and to direct visitors. (see Attachment C for a link to the Towson University campus map.)
2. Attendance is not mandatory, but is strongly recommended as clarifications may be provided.

E. DUE DATE AND TIME:

1. An original plus five (5) copies (for a total of 6) of the Initial Technical Proposal must arrive at the Issuing Office **by Wednesday, September 16, 2009, at 2:00 p.m.** in order to be considered. Proposers are requested to clearly mark the "original" set of the Initial Technical Proposal.
2. Second Phase Technical Proposals will be requested from only those firms shortlisted as a result of the Initial Technical Evaluation (see Section 00300 for further details). The due date for the Second Phase Technical Proposals is October 15, 2009. It is anticipated that the **Oral Presentation Sessions will be conducted with the short-listed AE firms on Wednesday, October 21, 2009 and/or Thursday, October 22, 2009, so Proposers are advised to set these dates aside in their entirety.**
3. A Price Proposal will be requested from only the highest technically rated A/E firm as a result of the Second Phase Technical Evaluation (see Section 00300 for further details). The **Price Pre-proposal meeting** is anticipated to be held on Thursday, November 5, 2009; the University requests that the candidate A/E firm submit (via e-mail) any **scope clarification questions** to the University Procurement Office by Friday, October 30, 2009.

The due date for the price proposal will be set upon completion of the second phase technical evaluation, however, the University anticipates the **price proposal due date** to be on or around 1:00pm, Tuesday, November 17, 2009.

4. 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.
5. Access to the thirteenth floor of 220 Arch Street on which the Issuing Office is located is **only accessible by public elevators**; the stairwell is not accessible to the public. Please note that all proposers will be **required to sign in at the security desk in this building prior to entering the elevator.**
6. **LATE PROPOSALS CANNOT BE ACCEPTED.** Proposals are to be delivered to the University's Procurement Services, Room 02-100, Thirteenth Floor, 220 Arch Street, Baltimore, Maryland 21201. The University recommends against use of mail or delivery services, which will not guarantee delivery directly to Room 02-100. Proposals delivered to the campus central mail facility or to locations other than Room 02-100 will not be considered "received" by the University's Procurement Services Office until they arrive at Room 02-100 and are clocked in. The University will not waive delay in delivery resulting from need to transport a proposal from another campus location to Room 02-100, or error or delay on the part of the carrier.

F. MODIFICATIONS AND WITHDRAWAL OF PROPOSALS:

1. Withdrawal of, or modifications to, proposals are effective only if written notice thereof is filed to the Issuing Office prior to the time proposals are due. A notice of withdrawal or modification to a proposal must be signed by an officer with the authority to commit the company.
2. No withdrawal or modifications will be accepted after the time proposals are due.

G. QUESTIONS AND INQUIRIES:

Questions and inquiries shall be directed in writing via email by September 9, 2009 to the individual referenced with the Issuing Office above.

H. RIGHT TO REJECT PROPOSALS AND WAIVE INFORMALITIES:

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

I. IRREVOCABILITY OF PROPOSALS:

The final A/E fee/price proposal for the project shall be irrevocable for one hundred twenty (120) calendar days from the final fee proposal due date. This period may be extended by written mutual agreement between the Proposer and the University.

J. LICENSES AND REGISTRATIONS:

Proposers must be licensed and registered as required by the Laws of the State of Maryland and shall submit proof of current licensing and/or registration, upon request.

K. ORAL PRESENTATION:

1. Proposers who submit proposals and are shortlisted as a result of the initial technical evaluation may be required to make individual presentations to University representatives (see Section 00300 for details).
2. The University also reserves the right to visit Proposer's place of business during the evaluation process.

L. ECONOMY OF PREPARATION:

Proposals should be prepared simply and economically, providing a straight forward, concise description of the proposer's offer to meet the requirements of the solicitation.

M. CONFIDENTIAL/PROPRIETARY INFORMATION:

Proposers should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets, and provide any justification of 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 of the Annotated Code of Maryland. Proposals are not publicly opened. Proposers 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 entire proposal with a proprietary statement).

N. MINORITY BUSINESS ENTERPRISE NOTICE:

1. Minority business enterprises are encouraged to respond to this solicitation.
2. The minority business participation level for this solicitation is set at fifteen percent (15%) of the total contract value inclusive of all fees. The forms entitled "MBE Attachment A, and Attachment B" will be required with the submission of the Technical Proposal. In addition, Attachment B, C, and D will be required at the time of issuance of the initial contract as well as with each contract amendment. By submitting a response to the RFP, the proposer agrees that such a percentage of the total contract award will be performed by minority business enterprises.
3. Minority business participation is included in the technical criteria for the Initial Technical Proposal (see Section 00300 for details).

O. ARREARAGES:

By submitting a response to this solicitation, a vendor 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.

P. BID/PROPOSAL AFFIDAVIT:

The Bid/Proposal Affidavit included in this package (see Attachment A for this form) must be executed by each responding proposer and submitted with the proposer's technical proposal.

Q. JOINT VENTURE PROPOSERS:

If the Proposer is a joint venture firm, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested. As part of the initial technical proposal submission, the proposer must identify the percentage partnership for each joint venture party, the responsibilities of each joint venture party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFP document.

NOTE: If the selected AE is a joint venture firm, all joint venture parties will be held responsible for the contract obligations separately and severally.

R. ADDENDUM

Any addendum/amendments to the solicitation must be acknowledged by persons and entities known to have been issued, or otherwise to have received the solicitation. An Acknowledgement of Addendum form is provided in Attachment A and is to be submitted accordingly with the Initial Technical Proposal.

S. INCURRED EXPENSES:

The University will not be responsible for any costs incurred by any vendor/firm in preparation and submittal of a proposal.

T. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the procurement officer within 10 days after the proposer knew or should have known its proposal was unsuccessful. The debriefing shall be limited to discussion of the unsuccessful offeror's proposal only and shall not include a discussion of a competing offeror's proposal. Debriefings shall be conducted at the earliest feasible time. A summarization of the procurement officer's rationale for the selection may be given.

U. 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: Executive Director, State Ethics Commission, 9 State Circle, Suite 200, Annapolis, Maryland 21401, 410-974-2068.

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 advice 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 vendor or any State of Maryland employee in connection with this procurement.

V. USE OF AFFILIATES TO AVOID TAXATION ON INCOME FROM STATE CONTRACTS

Contractor may not for any period during the Contract term, seek to reduce the amount of Contractor's income subject to Maryland income tax by payments made to an affiliated entity or an affiliate's agent for the right to use trademarks, trade names, or other intangible property associated with Contractor. Contractor agrees that during the course of this Contract it shall not make any such royalty or similar payments to any affiliated company; and if any such royalty or similar payments are made, Contractor and the affiliated company shall file separate Maryland income tax returns and pay their respective Maryland income taxes in such a manner that Contractor does not claim a deduction against Maryland income tax for such payments, and the affiliated company receiving the royalty or similar payment files Maryland income tax returns and pays Maryland tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the Contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof."

W. PAYMENTS TO CONTRACTORS BY ELECTRONIC FUNDS TRANSFER (EFT)

By submitting a response to this solicitation, the Proposer agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected firm shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland.

X. "eMARYLAND" MARKETPLACE

The successful bidder/offeror under this solicitation must be registered on eMaryland Marketplace prior to receiving a contract award. The instructions for registration can be found on the eMM website at www.eMarylandMarketplace.com

END OF SECTION 00100

SECTION 00200

II. INFORMATION AVAILABLE TO PROPOSERS

SECTION 00200

INFORMATION AVAILABLE TO PROPOSERS

- A. SOLICITATION DOCUMENTS:** This A/E solicitation #2009-32 MM dated August 26, 2009 consists of the documents noted below.

All sections are contained **within the solicitation document** with other documents packaged separately as noted:

00100	Instructions to Proposers
00200	Information Available to Proposers
00300	Proposals, Evaluation and Forms (Articles 1 through 4)
00400	Summary AE Scope of Work

Attachment A-University Forms Required with Proposal Submittal(s) [i.e., Bid/Proposal Affidavit, MBE Attachments A and B, Professional Liability Insurance Form, and Registration Documentation Form to be submitted in the Initial Technical Proposal as well as Reference Forms and Current Workload Form (required for the Second Phase Technical Proposal only)];

Attachment B-University Forms Required to be signed/ provided by the Selected A/E Firm at time of contract award [i.e., Contract Affidavit, University's A/E Contract (SFA-1) and MBE Schedule and Forms];

Attachment C-TU Campus Map;

The Project Program for TU Renovation Newell/Richmond Halls dated May 19, 2009 and available on UMB Procurement website: www.procurement.umaryland.edu Click on eBidBoard (RFP 2009-32MM).

The **TU Design Standards latest edition** are available separately from this solicitation document.

Please note: The University's Procedure Manual for A/E Services is also included as a contract document but will only be provided to the highest technically rated AE firm prior to commencing fee negotiations.

All of these materials will be included in the Contract with the University awarded as a result of this solicitation. The Proposer by submitting its proposal agrees that if awarded the Contract that it, as A/E, will be bound under the Contract to all the terms and conditions thereof inclusive of the University's Standard Form of Agreement with Architects/Engineers (SFA-1).

B. SET OF DOCUMENTS AVAILABLE TO PROPOSERS: A set of documents, which consists of the sections noted above, shall be available on UMB Procurement Service's eBid Board website: www.procurement.umaryland.edu .

C. AVAILABLE RECORD DOCUMENTS:

1. The University's Facilities Management upon request, will make accessible to the Proposers any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description, or other data are accurate, current or complete.
2. Such documents must be used, or copied, at the Towson University Office of Facilities Management. The Proposers shall assume the responsibility for cost of reproduction as well as replacing any damaged documents.

END OF SECTION 00200

SECTION 00300

III. PROPOSALS, EVALUATIONS AND FORMS

SECTION 00300

PROPOSALS, EVALUATION, AND FORMS

INTRODUCTION/OVERVIEW

ARTICLE 1

A. INTRODUCTORY SUMMARY OF PROPOSAL SUBMITTALS: Responses to the A/E solicitation #2009-32 MM are to consist of the following:

1. **Technical Proposal Submittal** (see Article 2 of this Section 00300 for detailed information): All proposers will be required to submit the **Technical Proposal**. One (1) original and five (5) copies (for a total of six (6) of the Technical Proposal Submittal are to be provided by each proposer. The Technical Proposal Submittal is due by Wednesday, September 16, 2009, **at 2:00 p.m. to the Issuing Office.**
2. **Second Phase Technical Proposal Submittal** (see Article 3 of this Section 00300 for detailed information): Only Proposers who are shortlisted based on the initial technical evaluation will be required to submit a Second Phase Technical Proposal. The due date for the **Second Phase Technical Proposal** is set as October 15, 2009 at 2:00 p.m.
3. **Oral Presentations** (see Article 2 of this Section 00300 for detailed information): Only those Proposers who are shortlisted based on the technical evaluation will be requested to attend an Oral Presentation at the University. The date and time for these sessions will be set upon completion of the initial technical evaluation; however, it is anticipated that the Oral Presentation Sessions will be conducted on Wednesday, October 21, 2009 and/or Thursday, October 22, 2009, so Proposers are advised to set these dates aside in their entirety.

The purposes of the Oral Presentation are as follows:

- (i) To allow the University to meet the Proposer's key personnel and,
- (ii) Discuss those items addressed in the Second Phase Technical Proposal.

The Oral Presentation forum will be informal, as the University is not interested in a marketing presentation; rather, we are requesting a round table discussion with the shortlisted AE firms.

Each shortlisted AE firm will be required to have the following key personnel attend: Principal in Charge, Project Manager, Project Architect, Historic Preservation Specialist, Mechanical Engineer and Electrical Engineer. The Proposers are advised to set these dates aside in their entirety with these key personnel so as to avoid a conflict.

3. **Price Proposal Submittal** (see Article 3 of this Section 00300 for detailed information): Only the highest rated technical firm will be engaged in fee negotiations with the University. The Price Pre-proposal Meeting is anticipated to be held on Thursday, November 5, 2009; the following representatives from the AE team are anticipated to be in attendance: Principal in Charge, Prime Architect, Project Manager, Mechanical and Electrical Engineer. The agenda for this meeting includes the following:
- **Review of the AE's scope clarification questions:** As previously indicated, the candidate AE firm is to submit (preferably by e-mail) any scope clarification questions that its team has to the University by Friday, October 30, 2009; the University anticipates responding and discussing these items at the Price Pre-proposal meeting.
 - **AE Fee Proposal Form:** The candidate firm will be provided with the format for the A/E Fee Proposal, which will be reviewed accordingly.
 - **AE Fee Negotiation Schedule:** The due date for the initial AE fee proposal is anticipated to be November 17, 2009.
 - **A initial fee negotiation meeting for the scope of work will be conducted on November 24, 2009. Three additional fee negotiations to be scheduled as needed.** Actual dates will be decided between the selected A/E and the University team.
- *Note: The University only accepts the following items as "reimbursables":
(i) printing expenses (defined as: reproduction of documents for review by other parties such as the University and other State agencies), (ii) out-of state travel (if any) defined as a minimum of fifty miles one way from the University), (iii) geotechnical testing, (iv) renderings, (v) models, and (vi) fire flow tests. All other expenses are part of the cost of doing business and, therefore, included in a firm's billing rate.
- The contract award is anticipated to be by February 2010.

END OF SECTION 00300, ARTICLE 1

SECTION 00300
PROPOSALS, EVALUATION, AND FORMS

TECHNICAL PROPOSAL SUBMITTAL
ARTICLE 2

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

Technical Proposals shall be delivered on, or before, Wednesday, September 16, 2009, **at 2:00 p.m.** to the UMB's Procurement Services at the address noted in Section 00100 of the RFP as "The Issuing Office".

The following items must be included in this Technical Proposal (forms for items #2, #3 and #4 are included in the solicitation package in Attachment A):

1. Detailed responses to Section 00300, Article 2, Initial Technical Proposal Criteria, Items 1 through 8 (noted below);
2. Bid/Proposal Affidavit;
3. Minority Participation Attachments A and B, and
4. 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.)

A. TECHNICAL PROPOSAL 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. Proposers should describe in detail and provide evidence supporting the qualifications requested below. All proposers are to compile their Technical Proposals in the order listed.

1. TEAM ORGANIZATION:

- 1.1 Organizational Chart:** Provide an organizational chart of the proposed AE Team inclusive of the following: (i) Firm Name; (ii) Area of Specialty (i.e., mechanical engineering, electrical engineering, etc.); and, (iii) Key Person's Name. Refer to 00100/ItemA as to required team members.

Note: If the Proposer Team is a Joint Venture refer to 00100/Item Q. Joint Venture Proposers for other information to be provided.

- 1.2 Basis for Selection:** Provide a brief explanation as to why each firm was selected for the proposed AE team (limit of 3 pages).

2. **STANDARD FORM SF254:** The proposing AE shall submit a **current** completed form for itself and all of its Consultants. The SF254 shall document each AE design team member's overall history and firm experience. It is desirable that projects listed on the SF254 are applicable to the University's proposed project. Please note with Item #8 on this form on Personnel by Discipline that the information should reflect the actual physical count of the personnel (head count) within the firm. If one person is responsible for more than one discipline, the disciplines should be clearly noted with partial times indicated (i.e., ½ project manager and ½ architect, etc.).
3. **STANDARD FORM SF255:** The proposing AE shall submit a completed SF255 for the proposed AE team inclusive of the information requested below. Please note the following in regard to SF255:
- Item #4 on this form requests information on Personnel by Discipline. The information provided herein should reflect the actual physical count of the personnel (head count) within the office or offices that will be performing the work for this project. If one person is responsible for more than one discipline, the disciplines should be clearly noted with partial times indicated (i.e., ½ project manager and ½ architect, etc.).
 - Item #9: The information under Item #9 of the SF255 is to indicate the current projects on which a firm is working for any institution in the University System of Maryland only.
 - Item #10: No information is being requested under Item #10.

3.1 **AE Team Personnel:**

3.1.1 **Key Personnel:** Submit resumes and experience for each key team member as noted below and confirm his/her role, area of expertise, similar/relevant project experience*, and basis for selection. Please use the position titles noted below in designating each person's role per the definitions noted for each. If the key person has less than five years with the current employer, provide prior employment history to give at least five years experience.

Specifically, the proposing AE is to submit those individuals with whom the University would be directly working should your AE team be selected; that is, these people will be those who the University will see on a regular basis and be in attendance at the design progress meetings:

- **Principal-in-charge:** Senior level position from prime/ proposing AE firm (such as Vice President) who will oversee the project from an executive level and to whom the AE Project Manager directly reports.
- **AE Project Manager:** Professional, licensed architect from the prime/ proposing AE firm who is responsible for the management of the design professionals (i.e., Project Architect,

Mechanical Engineer, Electrical Engineer, etc.) and the completion of the design documents.

- **Project Architect:** Licensed, professional architect who is directly responsible for the architectural design of the project.
- **Mechanical Engineer:** Licensed professional engineer who is directly responsible for the mechanical design of the project.
- **Electrical Engineer:** Licensed professional engineer who is directly responsible for the electrical design of the project.
- **Cost Estimator:** Professional person who is directly responsible for the cost estimating services.

Note: These key personnel must be **direct** employees of the applicable design firm (i.e. the primary architectural firm or its architectural/ engineering/consulting team firms).

Note: If the key person has less than five (5) years with the current employer, provide prior employment history, to give at least 5 years experience.

***Note regarding project experience:** Resumes for the Key Personnel should include similar and relevant project experience. Information provided should include the name, location, and full description of the project including the role the person performed on the project, the dollar amount, start and completion date of the project, construction method, square footage, use of building, etc. to adequately convey the experience and expertise of the person. Refer to page 00300/9 for the criteria to be used to evaluate project experience.

3.1.2 **Other Key Personnel:** In a separate section of the initial technical proposal, the proposing AE firm is to submit resumes and project experience for all other key design team members inclusive of the interior designer (must be certified interior designer or a licensed architect with expertise in interior design), lighting designer, fire protection engineer, hardware/security consultant, landscape architect, telecommunications consultant, historic preservation specialist, and other key design support personnel and indicate his/her role and area of expertise.

Note - Personnel Commitment: By submitting the names for consideration under this Key Personnel Section, the Proposer is committing these people to the University for this project's duration, if awarded the project. No personnel changes will be permitted without written authorization from the University via a contract amendment issued by University's Procurement Office.

4. **Project Experience of the Firms:** Submit a total of five (5) projects, which are similar or relevant to the University's project as indicated below. All projects submitted under this category must not be greater than ten (10) years old based on the project completion date with higher consideration given to projects less than five (5) years old. The project submission shall include the following:

- Project Name and Location;
- Project Owner, Contact Person and Telephone Number;
- Design Start Date, Construction Start and Project Completion Date;
- Construction Cost;
- Contract Method (i.e., GC, CM or DB)
- Project Gross Square Footage and Net Assignable Square Footage;
- Brief but informative Project Description;
- Project Setting (i.e., university, occupied, etc.);
- Names of Proposed Key Personnel (per #3.1 above) who were involved in the project and the assigned role for each (higher consideration is given if proposed key people were involved in the submitted projects and, particularly in the proposed role); and,
- Similarities of the submitted project to the University's project.

- 4.1 **Prime AE Firm Experience: Three (3) projects** are to be submitted by the **prime AE firm** in which the proposing/prime AE firm was the Architect of Record. Such projects **must** meet the criteria **noted below** in order to be considered:

4.1.1 AE of Record

The prime AE must be the AE of record for the projects submitted.

4.1.2 Size of Project

All three (3) projects must be greater than \$5 M for construction costs; higher consideration given if greater than \$10M.

4.1.3 Project Completion

- Two (2) projects **must** be complete and occupied for at least six (6) months;
- One (1) project **can be** either substantially complete (available for use for its intended purpose), or at the 100% Design Development phase; however, higher consideration will be given to completed projects.

4.1.4 Contract Type

Higher consideration will be given if projects have been done using the construction manager (CM) at Risk contract method.

4.1.5 Project Type

- At least two projects must be exterior renovations of existing buildings, with higher consideration if for institutions of higher education; and higher consideration if the project is a restoration of a historically significant building; and higher consideration if designed for LEED certification.

The projects submitted under this category are to be similar in size, function and complexity to the University's project. The criteria used in the evaluation of these projects include, but is not limited to, the following:

- Projects which include renovations of student residential facilities;
- Projects that include exterior renovations of masonry buildings with slate roofs;
- Projects which are historic buildings;
- Projects that are constructed utilizing a Construction Management at Risk method and,
- Projects located in a higher education setting*;

Note: Where the architectural component of the design team includes an **associated architectural firm**, one (1) of the three (3) projects may be projects for which the associated architectural firm was the architect of record. Where the proposing AE team is a **joint venture**, all joint venture parties must submit at least one (1) project on which the JV party was the architect of record. (No more than two (2) projects may be submitted from an associate Architect.)

4.2 Mechanical/Electrical Engineering Firm: Two (2) projects are to be submitted from the Mechanical/Electrical Engineer which meet the criteria noted below, completed and occupied for at least six (6) months with higher consideration given if in the higher education setting.

- One project must be (i) renovation of a residential facility, etc. and (ii) be designed by the mechanical/electrical firm with higher consideration if in the higher education setting.
- Both projects must be in excess of \$5M for construction costs; with higher consideration if closer to the Newell Richmond Renovation construction costs.

The projects submitted by the mechanical/electrical engineer may duplicate the projects submitted by the Prime AE firm provided the consultants have provided the required services for those projects.

***NOTE:** Higher education is defined as a 4-year (or higher) degree granting institution, (i.e. bachelors, masters, Ph.D., etc).

5. **PROFESSIONAL LIABILITY COVERAGE:** Complete the Professional Liability Coverage Form (found in Attachment A) to confirm the required professional liability insurance coverage (\$2M) including current and/or proposed additional coverage to be guaranteed if awarded the contract. Please include in this statement the dollar value of such coverage, expiration date and name of the insurance company.
6. **MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION:** Complete the MBE Attachment A Form and provide a narrative (not more than one single-spaced typewritten page) to describe the extent to which the 15 % MBE participation level is achieved. Greater consideration will be given to firms that demonstrate approaches, which enhance minority participation through meaningful project design responsibility. For example: 1) MBE participation goals reflecting the following major design disciplines: architecture, structural engineering, mechanical engineering, or electrical engineering, and/or 2) MBE participation in mentoring programs. Explanation in support of MBE utilization initiatives shall be included on or attached to the form. Higher consideration will be given if a firm's MBE efforts exceed the 15% MBE participation level.
- Note:** MBE's must be certified by the Maryland Department of Transportation and must not be graduated for the applicable NAICS code.
7. **ECONOMIC BENEFIT:** Provide a detailed, but concise, overall description as to how the award of this contract will benefit the economy of the State of Maryland if your firm is the successful AE. Such information is to include, but are not limited to, (i) AE team members who are Maryland firms and (ii) number of employees in each AE team member firm who are Maryland residents.
8. **REGISTRATION DOCUMENTATION:** Complete and submit the Registration Documentation form (found in Attachment A).

Note: It is preferred that the proposed Key People be registered in the State of Maryland and listed on the registration documentation. Higher consideration will be given in the evaluation if this is the case. If the Key People are not registered in the State of Maryland, you must list the name of the person who is registered in the state of Maryland and will be able to sign documents for the Key People. In any event, you must have someone registered in the state of Maryland for each discipline listed prior to the start of any fee negotiations.

SECTION 00300

PROPOSALS, EVALUATION, AND FORMS

ARTICLE 3

SECOND PHASE TECHNICAL PROPOSALS AND ORAL PRESENTATIONS

- A. **SECOND PHASE TECHNICAL PROPOSAL**: Only those AE firms who are shortlisted based on the initial technical evaluation will be requested to submit a Second Phase Technical Proposal. **Second Phase Technical Proposals** shall be delivered on, or before, October 15, **2009 at 2:00 p.m.** to UMB's Procurement Services Office at the address noted in Section 00100 of the solicitation as "The Issuing Office".

The following items to be included in this Second Phase Technical Proposal are as follows:

1. **Understanding of the Project and Project Challenge**: The A/E firm shall state, in a clear, concise manner, its understanding of the project and the program by its proposed design team inclusive of the following:
 - Its interpretation and understanding of the project based on the description contained herein;
 - Its knowledge of trends in renovation and upgrade of historic structures and higher education residential facilities;
 - Its expression of how its qualifications can best be applied to solving the program challenges;

Select one (1) aspect of this project which the Proposing AE team finds to be the most challenging and provide the following:

- a. A description of this one (1) aspect and why your AE team finds it to be the most challenging; and,
- b. A description of how your firm would address this issue and what your recommendations might be.

Note: The response should be limited to not more than four (4) single-spaced, typewritten pages using 12-point font.

2. **Special/Unique Qualifications**: Provide a narrative to elaborate on the special/unique qualifications and/or experiences of the proposed AE team, which make it uniquely capable to provide AE services on the University's project. Special firm and/or individual expertise is to be included.

Note: The statement should be objective and limited to not more than two (2) single-spaced, typewritten pages using 12-point font.

3. **Quality Control:** Provide a narrative of your team's approach to insuring well coordinated, high quality design documents; this approach is to specifically speak to "how" this will be achieved; it is not the University's intent that either the University or the Construction Manager, under contract with the University, be the quality control mechanism via their design review efforts.

Note: The statement should be objective and limited to not more than one (1) single-spaced, typewritten pages using 12-point font.

5. **References:**

5.1 **Firm References:** Provide the following AE firm references by completing the **Firm Reference Form** for each (see Attachment A of the AE Solicitation Document for this form):

- A. Prime/Proposing AE Firm: Provide three (3) firm references based on the three (3) submitted projects.
- B. Mechanical/Electrical Engineering Firm: Provide two (2) firm references based on the two (2) submitted projects.

5.2 **Additional Firm Project References:** Please provide one additional project reference for each firm noted above (#5.1), including name of company, contact name, and phone number. These will be used only in the event the University is unable to contact one or more of the references provided for the submitted projects given above (in #5.1.)
Please include with these references, a list of applicable projects with a brief description of each inclusive of dollar size and date completed.

5.3 **Key Personnel References:** Provide three (3) references for the following Key Personnel by completing the **Key Personnel Reference Form** for each (see Attachment A of the Solicitation Document for this form):

- A. A/E Project Manager
- B. Project Architect
- C. M/E Engineer

Reference Notes:

- Such references are to be from different projects; that is, only one reference per project is allowed. Only one (1) reference may be from the University of Maryland, Baltimore and one (1) reference from TU.
- The University reserves the right to verify all information given if it so chooses, as well as to check any other sources available (including itself if not provided as such.)

- Please be sure that accurate information is provided and that the contact person is capable of speaking to a firm's and/or key person's capability in performing the services required. References will be held in the strictest of confidence.

B. **ORAL PRESENTATION:** Only those Proposers who are shortlisted based on the initial technical evaluation will be requested to attend an Oral Presentation at the University.

The due date and time of the Oral Presentation will be set by the University upon completion of the initial technical evaluation, however, this session(s) is (are) anticipated to be held on 10/21/09 and 10/22/09. Proposers are advised to set these dates aside in their entirety accordingly on the appropriate people's calendars to avoid any conflicts. The actual time on this date will be verified with the applicable proposers at the time it is requested.

The purposes of the Oral Presentations are as follows:

- (i) To allow the University to meet the Proposer's key personnel; and,
- (ii) Discuss those items addressed in the Second Phase Technical Proposal.

The Oral Presentation forum will be informal as the University is **not** interested in a marketing presentation; rather, we are requesting a round table discussion with the shortlisted AE firms.

Each shortlisted AE firm will be required to have the following key personnel attend: Principal in Charge, AE Project Manager, Project Architect, Historic Preservation Specialist, Mechanical Engineer and Electrical Engineer.

Upon completion of the Oral Presentations, the University will conduct the Second Phase Technical Evaluation as described in Section 00300, Article 4.

END OF SECTION 00300, ARTICLE 3

SECTION 00300

PROPOSALS, EVALUATION, AND FORMS

EVALUATION AND NEGOTIATIONS PROCESSES

ARTICLE 4

A. TECHNICAL EVALUATION:

An evaluation of the Technical Proposals will be conducted by the University's Qualification Committee. Firms will be ranked and shortlisted based on the rankings; it is anticipated that a short-list of at least two (2) AE firms will be recommended by the Qualification Committee. Only shortlisted AE firms will advance in the procurement process. The Procurement Officer will review these rankings and, upon approval, notify all proposing firms of the names of all proposers indicating those who have been short-listed.

The scores from the Technical Proposal evaluation will be brought forward with the exception of the category for key personnel, which will be rescored. References will be checked during this Second Phase Technical Evaluation.

1. After the oral presentations, the Qualification Committee will submit to the Procurement Officer the final ranking of the shortlisted AE firms.
2. The Procurement Officer will review these rankings accordingly.
3. Upon approval of the Qualification Committee's ranking report, the Procurement Officer shall designate a Negotiation Committee.
4. All shortlisted firms will be notified and the candidate firm ranked number one will be asked to provide a price proposal for the project.

B. FEE NEGOTIATIONS:

1. The candidate firm ranked number one shall submit a detailed price proposal; the format for this price proposal will be provided by the University to the candidate firm at the Price Pre-proposal meeting, which is anticipated to be held on November 5, 2009. See Section 00300/2, Item #3 - Price Proposal Submittal for further details.
2. Negotiations shall be conducted between the candidate firm and the University Negotiation Committee (see Section 00300, Article 1- Price Proposal Submittal for the anticipated schedule for fee negotiation sessions.).

3. If the Procurement Officer determines that a satisfactory contract cannot be negotiated, the negotiations shall be terminated. In such instances, the University shall either commence negotiations with the candidate firm ranked number (2) two or re-advertise the procurement, as it deems appropriate.
4. Upon successful completion of negotiations, the USM Service Center will proceed with the contract award.

C. **AWARD:**

1. The successful AE firm will be required to sign the University's AE contract prior to BPW approval [see Attachment B for the University's Standard Form of Agreement (SFA-1) with Architects/Engineers].
2. Upon approval by the Board of Public Works, the University shall fully execute the contract with the successful AE firm.

END OF SECTION 00300, ARTICLE 4

SECTION 00400
SCOPE OF WORK
ARTICLE I

NEWELL AND RICHMOND HALLS RENOVATION

1.1 PROJECT OVERVIEW

Towson University's 328-acre campus is home to 46 buildings, over 4.2 million square feet of facility space, and more than 7,200 parking spaces that serve an institutional enrollment of over 21,000 students. Current plans aim to grow enrollment to approximately 25,000 students at the main campus in Towson by 2015 at the earliest.

Stephens and Richmond Halls were built in 1914 and are the two original buildings of the campus at the Towson location, with Newell Hall being added a few years later in 1923. Presenting the primary east face of the campus across the broad expanse of lawn towards York Road, these three buildings form the historical iconic image of the university. Currently, Newell and Richmond Halls serve as student residential facilities, with a portion of Newell used for the administrative offices of the Housing and Residence Life Department.

Newell Hall is three stories plus a basement totaling 57,101 square feet; Richmond Hall is six stories plus a basement totaling 32,391 square feet. In both buildings, exterior walls are multi-wythe, solid brick in Flemish bond, trimmed by terra cotta at openings, corners, copings and miscellaneous decorative elements. Interior framing is steel and concrete; the roof is framed in a combination of steel and wood, with wood decking. Sloped roofs are clad in slate while low-slope roofs are surfaced in bituminous sheet. Rain drainage elements are copper and windows are insulated aluminum. Both buildings are fully heated and air-conditioned, and both are fully sprinklered. Heating and chilled water serving air handling units is supplied from the Power Plant. Newell and Richmond Halls have had repairs, renovations and additions over their lives, with major efforts occurring in 1972 and 1996, but a comprehensive restoration of the exterior envelope has never been undertaken. There are issues with indoor air quality, moisture infiltration and mold.

The purpose of the program is to detail a comprehensive exterior renovation of both buildings, interior mechanical, electrical and plumbing systems and equipment upgrades/replacements, and selected interior reconfiguration and renovation tasks. A detailed summary of the project scope work is included in Section 2 of the program.

The project is consistent with the priorities and needs set forth in the Towson University *Campus Master Plan 2003-2013* approved in December 2003. The project site is not within the Chesapeake Bay Critical Area, a 100-year floodplain or known wetland area, will not impact historical and/or cultural resources and will not involve clearing of areas defined as forested by the State of Maryland.

The proposed schedule includes 12 months for design and 18 months for construction, including bidding and Board of Public Works approval, which needs to begin no later than February 1, 2011 with project construction beginning June 1, 2011 and completed by August 1, 2012, including commissioning. The design to budget for the project has been established at \$13,300,000, exclusive of design and administrative fees, Construction Manager pre-construction fees, owner contingency and funds for furniture, fixtures, and equipment (FFE).

1.2 Institutional Profile of Towson University

Founded in 1866, Towson University is recognized among the nation's best regional public universities, offering more than 100 bachelors', masters and doctoral degree programs in the liberal arts and sciences, and applied professional fields. Located in suburban Towson, eight miles north of Baltimore, our beautifully landscaped, 328-acre setting offers a pleasant environment for study and a diverse campus life, as well as easy access to a wealth of university and community resources.

With more than 21,000 students, Towson University is the second-largest public university in Maryland. As a metropolitan university, Towson combines research-based learning with practical application. Our many interdisciplinary partnerships with public and private organizations throughout Maryland provide opportunities for research, internships and jobs. Towson University is a founding member of the Coalition of Urban and Metropolitan Universities (CUMU).

Towson University is nationally recognized for quality and value, focused on teaching and committed to providing a broad range of opportunities for undergraduate and graduate education. By Carnegie Classification, Towson University is a Master (Comprehensive) University I. Towson University has achieved national prominence as a premier metropolitan comprehensive university by offering a wide range of excellent graduate and undergraduate degree programs and by increasing its regional and national reputation through its focus on student learning and its innovative programs and pedagogies, faculty creativity and scholarship, applied and sponsored research, community service, and cultural outreach to business, education and health care professions.

1.3 Project Team

The University, the Architect, the Design Engineers and any other project consultants and the Construction Manager (CM) shall be called the "Project Team". It is our intent that the "Project Team" shall work from the beginning of this project through construction completion and that the A/E shall provide leadership to the Project Team during the design phase and the CM shall provide leadership to the Project Team during the construction phase.

The University shall designate a Project Manager who shall be the University contact point during the Programming, Design and Construction Phases. This representative shall be the primary channel of communication to the University and shall act as the University's liaison with the Project Team.

The University shall review all Project documents at each design submittal (i.e., 100% Schematic Design, etc.); such review, however, will be made to insure that the intent of the Program, and the Project Design Standards are maintained and that the University's comments have been incorporated as requested. The A/E is solely responsible for the content, accuracy and coordination of all documents.

The University shall be the principle reviewer and decision-making authority within the Project Team. In the event of any disagreement or dispute between any members of the Project Team regarding the project, the University shall be the final decision making authority.

The University is committed to a "Partnering" approach to the successful design and construction of

its projects. The University defines partnering as collaboration among professionals (University, CM, A/E, and Trade Contractors) to maximize the success of a project while understanding and respecting the responsibilities and expertise of each team member. In light of this approach, the University may elect to conduct "Partnering" sessions on this project; a final determination will be made with the awarded A/E and CM firms.

1.4 Insurance Coverage Requirements:

The A/E shall obtain and maintain from and after the date of the A/E Contract the following insurance:

- (i) Professional Liability insurance in an amount not less than \$2M from the date of the AE Contract and through ten (10) years after final acceptance by TU of the Project.
- (ii) General Liability insurance in an amount not less than \$1,000,000 from and after the date of the A/E Contract and through two (2) years after final acceptance by TU of the Project. Such insurance is to include a contractual liability endorsement.
- (iii) Workmen's Compensation insurance per statutory requirements.

As a condition to the A/E contract, the A/E shall deliver to TU, not later than the date of execution of the A/E Contract, a certificate of insurance verifying compliance with the above insurance requirements. Such Certificates/ Memoranda shall also provide for notice to TU not later than thirty (30) days prior to the expiration or cancellation of the referenced policy.

Any and all insurance obtained and maintained by the A/E under this Agreement shall indicate, in form satisfactory to TU that TU may make a claim against such insurance. Failure to do so shall be a material breach of the A/E Contract. In the event that the A/E terminates, as a business entity, for any reason whatsoever, or in any manner whatsoever, the A/E shall obtain and provide for the maintenance of professional liability insurance, specifically covering the A/E's obligations performed or to be performed under this Agreement, in the amount set forth herein for the remainder of the time set forth herein.

1.5 Ownership of Project Documents

All data, information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the A/E or in the A/E's possession or control relating to the Project are the property of UM and shall be delivered to TU upon completion of any project done under this A/E Contract. In addition, all documents in progress are the property of UM and shall be delivered to UM promptly in the event of termination of the A/E Contract prior to completion of the contract.

The A/E shall be responsible for protection and/or replacement of any Construction Documents or other documents in its possession. The UM shall receive all original drawings and the A/E shall retain a reproducible copy.

END OF SECTION 00400, ARTICLE 1, GENERAL PROVISIONS

SECTION 00400
SCOPE OF WORK

SUMMARY OF AE SERVICES

ARTICLE 2

2.1 Overview - Project Development:

- A. **Project Construction Costs:** The Project Construction Costs (or Design-to-Dollar (DTD) amount) are those funds available for the construction of the Project inclusive of all CM construction costs (i.e., CM construction fee, staff reimbursables, general conditions and CM/GMP contingency) exclusive of CM Pre-Construction Fee, and the University's contingency and the AE fees. The DTD amount for this project is thirteen million-three-hundred thousand dollars (\$13,300,000). The AE is obligated to design the Project within this specified amount.
- B. Project design in accordance with the TU Design Standards, the latest edition, and the University's Procedure Manual for A/E Services, the latest edition.
- C. The proposed project schedule is 12 months for design and 18 months for construction, including bidding. Due to the early bid package, the design and construction phases may have a three (3) month overlap with project construction beginning June 1, 2011 and completed by August 1, 2012, including commissioning.

The design time frame will need to include University review time frames of two (2) weeks at 100% SD, two (2) weeks at 50% CD submittals, and two (2) weeks at 95% CD with a back check at 100% CD documents.

- D. All design services necessary to implement the goals of the Project inclusive of, but not limited to, the following: architectural, electrical, structural, civil, mechanical, fire protection design services, interior design/consultants, cost estimator, and historic preservation consultant as required for the Project.
- E. As previously indicated, the University has elected to use the Construction Management at Risk contract method for this project. The AE will, therefore, need to coordinate its efforts with the successful CM firm inclusive of reconciling cost estimates during the Schematic Design phase, participating in value engineering efforts, and attending pre-bid and post bid meetings during the Bidding phase.

Based on this method, all CM costs during the construction phase (fee, staff reimbursables, general conditions non-personnel items and CM-GMP contingency) are included in the Project Construction Costs noted above. As previously indicated, a copy of the CM solicitation document will be available from UMB Procurement Services for shortlisted A/E firms only.

2.2 **Meetings:**

- A. **Design Phase (SD through CD):** The following meetings are anticipated during the design phase which shall be conducted by the A/E with notes issued within three (3) business days of each meeting:
- i. **Design Progress Meetings** to be held every two (2) weeks unless agreed to otherwise by the University.
 - ii. **Design Review Meetings** after each design submittal; and,
 - iii. **System Review Meetings** during Construction Document phase among the design professionals and the University representatives to review system designs inclusive of mechanical, electrical, fire alarm and security.
- B. **Bidding Phase:** The A/E is to attend all pre-bid and post-bid meetings and is to interpret the contract documents during the bidding period. Interpretations shall be given by written instruction only. It is anticipated that each discipline (i.e., architectural, mechanical/electrical, etc.) will only need to be in attendance at one (1) pre-bid meeting and one (1) day long post-bid meeting.
- C. **Construction Phase Meetings:** The following meetings are anticipated during the construction phase and are to be attended by the AE with these meetings conducted by the CM:
- (a) **Progress Meetings** to be held every two (2) weeks unless otherwise agreed to by the University inclusive of the trade contractors.
 - (b) **Project Team Meetings** to be held as required and attended by the Project Managers for the CM, AE and University.
 - (c) **Owner's Meeting** to be held on a monthly basis and attended by the principals and project managers of the CM, AE and University.

2.3 **Value Engineering:** Participate in the CM's value engineering efforts throughout the design as necessary with the major VE session anticipated at 100% Design Development.

2.4 **Cost Estimates:** The AE shall engage a professional cost estimator to provide full scale cost estimates, or prepare their own cost estimate, at 100% Schematic Design and at 50% Construction Documents. The AE and its estimator shall attend a cost estimate reconciliation meeting after each estimate; these meetings are expected to be ½ day in length. The cost estimate format is to be developed between the architect or architect's cost estimator and the CM's cost estimator as approved by the University.

2.5 **Shop Drawing/Review and Approval:** The A/E shall furnish all shop drawing review/approval for compliance with design documents, in accordance with the Contract Documents of this solicitation listed in Section 00200, and in accordance with good design and engineering practice. The A/E shall review and approve upon the Trade/Subcontractors' submittals such as Shop Drawings, Product Data and Samples, for checking for conformance with information given and the design concept expressed in the Construction Documents. The A/E's action shall be taken within the required time frame for the project so as to cause no delay in the work, while allowing sufficient time in the A/E's professional judgment to permit adequate review. The A/E's action on all shop drawings/submittals shall be reviewed by UM prior to the transmission to the Trade/Subcontractor.

- 2.6 **Document Interpretation:** During the Construction phase, the A/E shall interpret Construction Documents as necessary and issue the applicable documents as may be necessary to explain construction details. Change Bulletins (CB) or Architect Supplemental Information (ASI) must be issued by the AE for any changes in the construction documents.
- 2.7 **Quality Assurance/Inspection:** The A/E shall make periodic visits to the Project as required by the progress of the construction work or as requested by UM to gain familiarity with the progress and quality of the construction and to determine in general if the construction of the Project is proceeding in accordance with the Construction Documents. In making such periodic visits to the site and on the basis of such on-site observations the A/E shall guard UM against defects and deficiencies in the construction work and shall report to UM any observed defect or observed deficiency.
- 2.8 **Change Orders:** The A/E shall review change order proposals as requested by the University related to scope of work
- 2.9 **Requests for Information:** The A/E shall review the RFIs and respond accordingly inclusive of the issuance of Change Bulletins as appropriate.
- 2.10 **Punch List:** The A/E shall be responsible for the preparation and review of punch lists. Such punch lists will only be performed once a written statement from the CM is received by UM stating that the Project is complete and in accordance with the Contract Documents.
- 2.11 **Record Drawings:** The A/E shall be responsible for the provision of record documents. The record documents shall include Mylar reproducible of all drawings, Project Specifications, Project Manual originals, and other construction contract bid documents. In addition, the A/E shall furnish the above referenced Construction Contract Drawings and Contract Documents updated at completion of the project for "As-built Conditions" on floppy disk(s) for AutoCAD 2000 to the University for CADD generated drawings.
- 2.12 **Building Commissioning:** The A/E shall be responsible for the provision of the Design Engineer responsibilities for building commissioning. The Commissioning Agent and Test Engineer responsibilities will be by the Construction Management Firm.
- 2.13 **Post Construction Services:** The A/E shall participate in one (1) site visit within the two (2) year project warranty period. It is anticipated that this site visit will be incorporated with other visits to the campus.

END OF SECTION 00400, ARTICLE 2

ATTACHMENT A

TECHNICAL PROPOSAL FORMS

The following forms must be included within the Technical Proposal. However, please refer to Section 00300 for further required contents of the technical proposal. Completion of these forms is not the entire technical proposal.

Initial Phase:

- MBE Forms Attachments A and B
- Bid/Proposal Affidavit
- Professional Liability Insurance Form
- Registration Documentation Form
- Acknowledgement of Receipt of Addendum Form (if applicable)

Second Phase: Provided for information only. Only the short listed firms will need to provide these.

- Current Workload of Key People
- Reference Forms

It is the Proposer's responsibility to thoroughly review the RFP documents, in particularly Section 300, to ensure all required contents are submitted.

Attachment A
MBE

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

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 in response to Solicitation No. 2009-32 MM, which includes Schedule MBE, I affirm the following:

1. I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of 15 percent and, if specified in the solicitation, sub goals of ____ - ____ percent for MBEs classified as African American-owned and ____ - ____ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve MBE participation of _____ percent 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 (competitive sealed proposal), 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 (Attachment B) with the bid or proposal.
3. I understand that if I am notified that I am the apparent awardee, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
 - (a) Outreach Efforts Compliance Statement (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 shall determine that I am non responsive and therefore not eligible for contract award. If the 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 BID/PROPOSAL

Attachment B
MBE
MBE PARTICIPATION SCHEDULE

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
List Information for Each Certified MBE Subcontractor/Supplier 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	

USE ATTACHMENT B CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ % \$ _____

Document Prepared by: (please print or type)	
Name: _____ (Signature)	Name/Title: _____

Attachment B
MBE PARTICIPATION SCHEDULE (continued)

List Information for Each Certified MBE Subcontractor/Supplier 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	
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	

Submit this Schedule with Bid/Proposal

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT: I am the _____ (title) and the duly authorized representative of _____ (business) and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONDITIONS

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 (as is defined in Section 16-101 (f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the 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) (use attachments as necessary):

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, 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, SS 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of the SS11-205.1 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 subsection (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 SSB 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) (use attachments as necessary):

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) (use attachments as necessary):

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 Section 16-101, et seq., of the State Finance and Procurement Article of the Annotated Codes 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) (use attachments as necessary): _____

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, SS 14-101 through 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 meaning 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 program 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 five (5) days after a conviction;
 - (i) Notify the procurement officer within ten (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 conviction, impose either of the following sanctions or remedial measures on an 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 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 21.07.11 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 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) Except as validly contested, the business had paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final payment under any contract relating to this bid/proposal affidavit.
- (2) The business named above is a _____ sole proprietorship, _____ partnership, or _____ corporation formed under the laws of the State of _____. [For entities not formed under the laws of Maryland,] I further affirm that the business named above is 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 current resident agent is filed with the State Department of Assessments and Taxation as:

Name: _____

Address: _____

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. ACKNOWLEDGMENT

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 the accompanying 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 PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

EIN or SS#: _____

By: _____

Solicitation#: _____

(Authorized Representative and Affiant)

AE SOLICITATION #2009-32 MM TU NEWELL/RICHMOND HALLS RENOVATION
PROFESSIONAL LIABILITY INSURANCE FORM INITIAL TECHNICAL PROPOSAL

AE FIRM: _____

Firm's statement of professional liability insurance coverage including current and/or proposed additional coverage to be guaranteed if awarded the project must be inserted below. The firm recommended for appointment will be required to submit evidence of \$2M professional liability insurance coverage prior to execution of the contract. Failure to complete the insurance information may result in your firm being disqualified from further consideration for this project.

Dollar Value: \$ _____

Expiration Date: _____

Insurance Company: _____

Comments (if any): _____

Note: Please include information on current and/or proposed additional coverage to be guaranteed if awarded the contract. Should an A/E firm not provide confirmation of the required professional liability insurance coverage during the technical phase of this procurement, it will be disqualified from further consideration.

AE SOLICITATION #2009-32 MM
REGISTRATION DOCUMENTATION
INITIAL TECHNICAL PROPOSAL

TU NEWELL/RICHMOND HALLS RENOVATION

AE FIRM: _____

All individuals practicing occupations requiring registration or licensure must be currently registered with the appropriate State of Maryland Registration Board. It is, therefore, important that the Architect/Engineer address himself/herself to the disciplines of registration required for this project.

Disciplines required for this project are listed below and marked with an asterisk (*). For each marked discipline, insert name of the individual, and where required, date of Maryland registration, and Maryland registration number. Every individual named on this attachment should be represented in the U.S. Standard Form 255 under the heading of "Brief Resume of Key Persons."

<u>Discipline Required</u>	<u>Name of Individual</u>	<u>Date of Md. Registration</u>	<u>Md. Reg. Number</u>
(*) Principal	_____	_____	_____
(*) Project Manager	_____	_____	_____
(*) Project Architect	_____	_____	_____
(*) Mechanical Engineer	_____	_____	_____
(*) Electrical Engineer	_____	_____	_____
(*) <i>Structural Engineer</i>	_____	_____	_____

Note: Failure to complete the requested information on this form may result in being disqualified from further consideration for this project.

The foregoing is a statement of facts.

Signature: _____

Typed Name & Title: _____

Date: _____ Name of Firm: _____

RFP NO.: RFP 2009-32 MM

RFP FOR: TU NEWELL AND RICHMOND HALLS RENOVATION

PROPOSAL DUE DATE/TIME: WEDNESDAY, SEPTEMBER 16, 2009 AT 2:00 P.M.

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 _____

Signature _____

Printed Name _____

Title _____

Date _____

SECOND PHASE TECHNICAL PROPOSAL

AE FIRM REFERENCES

PROPOSING A/E FIRM NAME: _____

Prime Proposing AE Firm: Provide three (3) firm references based on the three (3) submitted projects as well as one additional reference. Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. Both references are to be from the projects submitted by the AE firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: _____ TITLE _____

TELEPHONE # _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

2. CONTACT PERSON: _____ TITLE:

TELEPHONE # _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

AE FIRM REFERENCES

PROPOSING A/E FIRM NAME: _____

3. CONTACT PERSON: _____ TITLE:
TELEPHONE # _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF
PROJECT, AND PROJECT COMPLETION DATE):

4. CONTACT PERSON: _____ TITLE:
TELEPHONE # _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF
PROJECT, AND PROJECT COMPLETION DATE):

SECOND PHASE TECHNICAL PROPOSAL

M/E ENGINEERING FIRM REFERENCES

PROPOSING AE FIRM NAME: _____

M/E Engineering Firm: Provide two (2) firm reference based on the two (2) submitted project as well as one (1) additional reference. Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. Two (2) of these references is to be from the projects submitted by the AE firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: _____ TITLE: _____
TELEPHONE # _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

2. CONTACT PERSON: _____ TITLE: _____
TELEPHONE # _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

M/E ENGINEERING FIRM REFERENCES

PROPOSING A/E FIRM NAME: _____

STRUCTURAL ENGINEERING FIRM: _____

3. CONTACT PERSON: _____ TITLE: _____

TELEPHONE # _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF
PROJECT, AND PROJECT COMPLETION DATE):

KEY PERSONNEL REFERENCES PROPOSING FIRM: _____

KEY PERSON/POSITION: _____ / _____

FIRM EMPLOYED BY: _____

Three (3) project references are requested. Such references are to be **project references not employment references**; that is, the University is interested in speaking to a Project Owner regarding the person's performance on a particular project. These references are to be from either (i) the projects submitted by the applicable firm in the initial technical proposal, if applicable, and/or (ii) from the similar jobs listed with the person's resume. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **person's performance in the role to be assigned on this project.**

1. CONTACT PERSON: _____ TELEPHONE #: _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT,
PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE:_____

2. CONTACT PERSON: _____ TELEPHONE #: _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT,
PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE:_____

3. CONTACT PERSON: _____ TELEPHONE #: _____

COMPANY NAME: _____

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT,
PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE:_____

AE for TU NEWELL/RICHMOND HALLS RENOVATION
Second Phase Technical Proposal

2009-58-AE

KEY PERSONNEL WORKLOAD FORM

Proposer: _____

Page 1 of 1

Below please provide the current workload for each of the Key Personnel; that is, identify what other jobs, if any, on which the person will be working during the University project inclusive of the following:

- Person's role on the project (s);
- Percentage (%) time commitment to the project(s); and,
- anticipated completion date for the person's work assignment for the project(s).

Position	% Available to TU's Project	Other Projects Assigned during the TU Project Schedule; person's role on the project, % of time commitment to the project, and anticipated completion date of the person's work assignment
_____ Principal in Charge		
_____ Project Manager		
_____ Project Architect		
_____ Mechanical Engineer		
_____ Electrical Engineer		
_____ Structural Engineer		
_____ Cost Estimator		

ATTACHMENT B

Contract Affidavit
MBE Schedule
Standard Form of Agreement (SFA-1)

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (___domestic) (___foreign) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that 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 current resident agent is filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

City, State, Zip: _____

(2) Except as validly contested, the business had 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.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me or for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____ By: _____
(Authorized Representative & Affiant)

SCHEDULE MBE
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

- An MBE subcontract participation goal of 15 percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror agrees that this dollar amount of the contract will be performed by certified minority business enterprises.
- ◆ 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 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

Awarded Contractor shall:

1. Submit monthly to the Procurement 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. (See MBE Monthly Payment Form Attachment E).
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Procurement 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. (See MBE Monthly Payment Form Attachment F)
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 bid or offer)
- B. MBE Participation Schedule (must be submitted with bid or offer)
- 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)
- E. MBE Monthly Payment Form (Submitted monthly as needed after award by the prime contractor)
- F. MBE Monthly Payment Form (Submitted monthly as needed after award by the MBE subcontractor)

Attachment C

OUTREACH EFFORTS COMPLIANCE STATEMENT

This document must be submitted within 10 working days of receiving notice of potential award or date of conditional award (per COMAR 21.11.03.10), whichever is earlier.

In conjunction with the bid or offer submitted in response to Solicitation No. _____,
I state the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

4. ☐ Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements. (Describe efforts)

- ☐ This project does not involve bonding requirements.

5. ☐ Bidder/Offeror did/did not attend the pre-bid conference
☐ No pre-bid conference was held.

Bidder/Offeror Name

Address

By: _____
(Signature)

Name, Title (Print)

Date

Attachment D

SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT

This document must be submitted within 10 working days of receiving notice of potential award or date of conditional award (per COMAR 21.11.03.10), whichever is earlier.

SUBMIT ONE FORM FOR EACH CERTIFIED MBE LISTED IN THE MBE PARTICIPATION SCHEDULE (ATTACHMENT B)

Provided that _____ is awarded the State contract in
conjunction with Solicitation No. _____, it and _____,
Prime Contractor Name MBE Subcontractor Name

MDOT Certification No. _____, intend to enter into a contract by which

Subcontractor shall: (describe work) _____

- ☐ No bonds are required of Subcontractor
- ☐ The following amount and type of bonds are required of Subcontractor:

MBE Subcontractor Contract Amount

Prime Contractor Signature

MBE Subcontractor Signature

By: _____
Name, Title (Print)

By: _____
Name, Title (Print)

Date

Date

Using Agency: Towson University

UNIVERSITY OF MARYLAND, BALTIMORE
DEPARTMENT OF PROCUREMENT SERVICES

STANDARD FORM OF AGREEMENT WITH ARCHITECTS & ENGINEERS
(FORM SFA-1)

THIS STANDARD FORM OF AGREEMENT is made effective the _____ day of _____, 20____, between the University System of Maryland, an agency of the State of Maryland ("USM"), acting through University of Maryland, Baltimore, one of its constituent institutions ("University"), and _____, a corporation organized under the laws of the State of _____ (the "A/E"), FID # _____.

RECITALS

1. Any capitalized term used, but not defined in these Recitals shall have the meaning described in Article I of this Standard Form of Agreement.
2. The A/E acknowledges that it (i) has been informed of the scope and nature of the Project (including specifically and separately the Design Phase and the Construction Phase), (ii) has read, examined and understood the Project Program, and (iii) has submitted the Proposal to the University.
3. By executing, this Standard Form of Agreement and by submitting the Proposal, the A/E represents and has represented to the University that the A/E is qualified to perform the Work, and to execute the same satisfactorily, within the times specified.
4. The A/E by this Standard Form of Agreement acknowledges that the University has relied upon and is entitled to rely upon the A/E's representations set forth or incorporated into this Standard Form of Agreement.
5. In reliance upon the A/E's representations set forth in this Standard Form of Agreement, the University desires to engage the A/E to perform the Work, on the terms and conditions set forth, referred to or incorporated into this Standard Form of Agreement. The A/E desires to accept that engagement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions in this Standard Form of Agreement: The following terms, as used in this Standard Form of Agreement shall have the following meanings:

1.1.1 "Additional Services" has the meaning ascribed in Section 2.1.2.

1.1.2 "Additional Work" has the same meaning as "Additional Services" in #1.1 above.

1.1.3 "A/E Commencement Date" means that date indicated in the NTP.

1.1.4 "A/E Construction Commencement Date" means that date indicated in the Construction NTP.

1.1.5 "Agreement" means collectively the following: (i) this University Standard Form of Agreement with Architects and Engineers ("Standard Form of Agreement"); (ii) any and all documents and materials attached hereto; (iii) the Program, (iv) any and all materials developed or prepared by the A/E in performance of the Agreement and approved by the University, (v) any and all documents and materials referenced herein or made part hereof (including without limitation the Program and its components); (vi) any and all amendments of any of these; and, (vii) any and all Change Orders. In the event that the provisions of the several parts of the Agreement are in conflict or are contradictory, the following in order of priority will be the order of precedence in construing and interpreting the Agreement: Standard Form of Agreement and attachments thereto, the University's Architecture and Engineering Design Standards, Proposal, Project Program, then USM Procedure Manual.

1.1.6 "Change Orders" means any orders, which is or is deemed to be a change order per Article XII.

1.1.7 "Construction Manager" means the person or entity designated from time to time by the University to carry out the function of construction manager (with provision of guaranteed maximum price) for the Project. The University shall identify the Construction Manager to the A/E upon the selection of the Construction Manager. During the term of this Standard Form of Agreement, a substitute Construction Manager, from time to time, may be designated by the University with notification of such substitution provided in writing to the A/E.

1.1.8 "Construction NTP" means that Notice to Proceed issued by the Owner's Representative authorizing the A/E to commence the Construction Work.

1.1.9 "Construction Services" means that portion of the Work to be performed during the Construction Phase(s).

1.1.10 "Contract Documents" means collectively the following: (i) The University-Construction Manager agreement, (ii) the conditions of the contract (general, supplementary, and other conditions), (iii) the drawings, (iv) the specifications, (v) all addenda issued prior to, and

all modifications issued after, execution of the University-Construction Manager agreement.

1.1.11 "Design Services" means that portion of the Work to be performed during the Design Phase.

1.1.12 "NTP" means the Notice to Proceed issued by the Owner's Representative authorizing the A/E to commence the Design Work.

1.1.13 "Phases" state shall have the definition attributed in Section 2.1.3 and shall also refer to as the context requires the time assigned for the performance of that portion of the Services, in the Schedule or otherwise in the Agreement. As used in the Agreement, the designations assigned to the several phases in Section 2.1.3 shall mean the part of the Services to be performed in each of the phases respectively as well as the time assigned for the performance of that portion of the Services in the Schedule or otherwise in the Agreement.

1.1.14 "Probable Construction Cost" means the total amount (but not including contingencies) determined under any Construction Cost Estimate to be the total hard construction cost for the Project in accordance with the Program.

1.1.15 "Procurement Officer" means an individual designated from time to time by the University's Department of Procurement Services to function as the procurement officer and to administer State procurement law and regulations for the Agreement. During the term of this Standard Form of Agreement, a substitute Procurement Officer may be designated by the University with notification of such substitution provided in writing to the A/E.

1.1.16 "Program" means collectively the following:

- a. The Facility Program for a Capital Improvement Project entitled "Renovation of Newell and Richmond Halls", Towson University Campus of the University System of Maryland;
- b. The Final Fee Proposal submitted by the A/E dated _____ inclusive of the organizational chart, which denotes the key team firms and the key personnel to be assigned for the duration of the project;
- c. USM Procedure Manual dated 8/99 as amended ("Procedure Manual");
- d. AE Solicitation Document RFP#2009-32MM dated August 26, 2009

Addendum #1 dated _____;
Addendum #2 dated _____;
Addendum #3 dated _____;
Addendum #4 dated _____;
- e. The Towson University Architectural and Engineering Design Standards,("Design Standards");
- f. The University Telecommunications Wiring Standards; and,
- g. The University Signage Plan and Standards

1.1.17 "Project" means the Towson University Newell Richmond Halls Renovation as more fully discussed in the Program.

1.1.18 "Project Construction Costs" is the amount of _____ dollars (\$_____), which is the maximum hard construction costs for construction of the Project, exclusive only of A/E fees, the Construction Manager's pre-construction fees, hazardous material abatement and the University's construction contingency. The Project Construction Costs include all CM construction costs (i.e. CM Construction Fee, On-Site Staff Reimbursables, Non-personnel General Conditions, and CM/GMP Contingency).

1.1.19 "Project Manager" "Owner's Representative" means the individual designated from time to time by the University's Office of Facilities Management to serve as the University representative with respect to matters relating to this Standard Form of Agreement other than those matters which are the responsibility of the Procurement Officer or the Construction Manager. The Project Manager shall be designated by the University. During the term of this Standard Form of Agreement, a substitute Owner's Representative, may be designated by the University with notification of such substitution provided in writing to the A/E.

1.1.20 "Project Team" means the representatives of the University, the A/E and the Construction Manager assigned to the Project.

1.1.21 "Schedule" means the timetable for completion of the Services. Unless otherwise modified as provided in this Standard Form of Agreement, the Schedule shall be the timetable set forth in the Proposal. The Schedule as stated in Addendum #_:

"The design time frame is _____ months from the issuance of the Notice to Proceed for the project design inclusive of _____ months for bidding." The design time frame includes the University review time frames of _____ weeks at 100% SD, _____ weeks at 100% DD, _____ weeks at 50% CD submittals, and _____ weeks at 95% CD with a back check at 100% CD documents.

_____ early bid package* is to be provided by the AE for _____.

The construction time frame is _____ months from the issuance **of** the Notice to Proceed for the Construction Administration phase to construction completion.

"* Due to the early bid package noted above, the design and construction phases will overlap by _____ months resulting in total design and construction time frame of _____ months.

A/E's obligation in connection with bidding will be set forth on the schedule and will not necessarily be included in the Design Phase.

1.1.22 "Services" means the professional services to be provided by or caused to be provided by the A/E and its agents and consultants under and in compliance with this Standard Form of Agreement, as set forth in the Agreement or which are appropriate or necessary to the implementation, performance or completion of the A/E's engagement set forth in the Program. Notwithstanding anything herein to the contrary, the Work shall include additional work and matters included in Change Orders.

1.1.23 "State" means the State of Maryland.

1.1.24 "Work" has the same meaning as the term "Services" as defined in #1.1.22 above.

1.2 Applicability of Definitions. Any definition ascribed in this Standard Form of Agreement shall apply in all of its provisions unless otherwise indicated. Any definitions ascribed in the Procedure Manual or in the Construction Manager Request for Proposal shall apply throughout the Agreement unless (i) otherwise indicated, or (ii) another definition has been ascribed. Any other definitions ascribed in any component of the Agreement shall apply only to that component, unless otherwise indicated or required by the context.

1.3 Construction "Including". The term "including" as used in the Agreement shall be construed to mean "including, without limitation" unless otherwise specifically provided.

1.4 Locative Adverbs. The locative adverbs "below", "above", "herein", "hereto", "hereby", "hereinafter" and like words wherever the same appear in the Agreement; mean and refer to the component of the Agreement, in which the word appears, in its entirety, and not to any specific article or section hereof unless the context otherwise requires.

1.5 Reference to Section. Wherever reference is made in the Agreement to a particular "Section" or "Paragraph" without reference to a particular component of the Agreement, reference shall be made to that component in which those terms appear respectively.

ARTICLE II
GENERAL OBLIGATIONS OF THE A/E
SCOPE OF ENGAGEMENT

2.1 Engagements

2.1.1 The A/E is engaged generally to provide professional services in accordance with and subject to the provisions of the Agreement. It is the intent of the parties to set forth in the Agreement the terms and conditions in effect for (i) the Design Phase from and after the date hereof and (ii) the Construction Phase(s) from and after the effective date of the Construction Phase Amendment. (Design Phases are defined below in 2.1.3 and Project Phases are defined below in 2.1.4).

2.1.2 The A/E in addition to the scope of engagement set forth above and the Services required by the Agreement, shall undertake, as the University may direct in writing, studies or special consulting work not identified originally in the Agreement. Such Services shall be "Additional Services" and shall be subject to the University's prior approval of the price and services. In such case the A/E shall engage appropriate consultants or specialists as directed by the University. Compensation for any Additional Services and any consultants engaged by the A/E to perform Additional Services will be determined pursuant to the provisions of the Agreement governing Change Orders.

2.1.3 Phases. The Services shall be divided into the following parts, referred to as "phases" and each phase respectively by the designation set forth below:

- (i) "Schematic Design Phase"
- (ii) "Design Development Phase"
- (iii) "Construction Documents Phase"
- (iv) "Bidding Phase"
- (v) "Construction Administration Phase"
- (vi) "Post-Construction Phase"

Provisions of the Agreement applicable to phases generally shall be applicable specifically to each phase designated herein. "Design Phase" refers to, collectively, (i), (ii), (iii), and (iv). "Construction Phase" refers to, collectively, (v) and (vi).

2.1.4 The parties agree that until the Agreement is amended to reflect the availability of funds for the Construction Phase and the approval of that amendment by the Board of Public Works ("Construction Project Amendment"), the Agreement shall be in effect only as to the Design Phase and to the obligations of the parties to effectuate the Construction Project Amendment. Upon execution of the Construction Project Amendment as provided in the Agreement and the approval of the Construction Project Amendment by the Board of Public Works, the Agreement shall be effective as to all of the phases so that the parties also shall be bound by the provisions set forth in the Agreement in connection with the Construction Phase.

2.1.5 If and when funds are available to the University for the Project Phase(s), the University at its sole discretion will execute the applicable Project Amendment. Not later than five (5) business days after receipt of a written request from the University, the A/E shall execute the Project Amendment(s). Failure of A/E so to do shall be a material breach of the Agreement. The Project Amendment(s) shall take effect upon approval by the Board of Public Works, if any. The University shall not be obligated in any way whatsoever under the Agreement to seek the availability of funds for the Project Phases.

2.2 Standard of Performance

2.2.1 The A/E shall provide the Services as required by the Agreement completely and adequately in every detail. The A/E solely shall be responsible for the technical completeness, sufficiency and accuracy of the performance of the Professional Services and any material, of any nature whatsoever, produced by the A/E and delivered to the University.

2.2.2 The A/E shall perform the Services in all respects in accordance with those usual and customary standards of professional aptitude, skill and diligence which, at the time of performance of the Services, commonly are followed by architects and engineers in the performance of the same or similar services.

2.2.3 The A/E shall be responsible for the provision of all Services whether provided by the A/E or its consultants, agents, representatives or employees or others on behalf of the A/E.

2.2.4 The approval of Contract Documents, any material produced by the A/E, and any construction installed in connection with the Project by the University or the State in no way relieves the A/E of its responsibility for the accuracy and completeness of such Contract Documents, nor compliance with required Standards, Codes, Ordinances or other applicable regulations, nor compliance with the Agreement and applicable law.

2.3 Timeliness of Performance.

2.3.1 Commencement of Services: The Design Services shall commence on the A/E Commencement Date. The A/E's subsequent Design Phase Services and Construction Services shall commence on the date of the applicable A/E Project Phase Commencement Date.

2.3.2 Upon issuance of the NTP or the Construction NTP respectively, the University shall re-establish the dates in the Schedule with reference to the start date set forth in the NTP or the Construction NTP.

2.3.3 The A/E shall perform the Services as expeditiously as is consistent with good professional skill and care and the orderly progress of the Services and the Project.

2.3.4 The A/E shall perform the Services and the portions thereof each within the times established in the Schedule. In the event that dates set on the Schedule are not met (either because portions of the Work are performed earlier or later than the date set forth), then the University at its sole discretion reserves the right to modify the Schedule, which modification shall not be, or be deemed to be, a waiver of any and all rights the University or the A/E may have in connection with a failure in a party's compliance with the Schedule from time to time. A modification of the Schedule by the University shall provide an extension of the various deadlines identified in the Schedule and shall not allow any new intervening time gaps dividing the period covered by the Schedule.

2.4 Consultants. The A/E shall engage (i) those consultants identified in the Proposal only for the purposes identified in the Program or (ii) other consultants not identified in the Proposal only with the prior written approval of the University. The names of all consultants not identified in the Proposal, shall be submitted to the University by the A/E for approval before any Services are performed by such persons. The A/E shall provide the University any and all material and information requested about any proposed consultant. The A/E may rely only upon approval issued by the University in writing. Such engagement shall not constitute an engagement of a consultant by the University. The A/E shall be responsible to the University for any and all Services performed by a consultant. In all instances, the term "A/E" as used in the Agreement includes action by consultants, as appropriate. The A/E shall cause all consultants engaged by the A/E to be bound by the applicable terms of the Agreement.

2.5 Meetings.

2.5.1 The A/E shall (i) attend conferences and meetings with the Project Manager, the Construction Manager, the Procurement Officer and the Project Team, as provided in the Program and as necessary to execute the various phases of the Services; (ii) present to the University documents required under the phases of the Services for review and approval; and (iii) present documents to the State Board of Architectural Review as requested by the University or required in the Procedure Manual. If the Proposal specifically limits the A/E's obligation to attend conferences or meetings, those limitations, narrowly construed, shall take precedence.

2.5.2 The A/E shall prepare concise minutes of any and all conferences held which the A/E is required to attend as contemplated in Section 2.5.1. These shall state all decisions reached and who made them. Original shall be addressed to the Project Manager, with copies as required for persons concerned.

2.5.3 The A/E shall notify the Project Manager of all or conferences desired by or anticipated by the A/E sufficiently in advance of the meeting to permit the attendance of all concerned parties. As a general rule, such conferences will be held at the University's Office of Facilities Management.

2.5.4 Presentations before the Board of Architectural Review shall be in compliance with Section 1.7 of the Procedure Manual, as amended.

2.5.5 The A/E shall fully participate in the Value Engineering Workshop(s)/Session(s) conducted by the Construction Manager during the Design Project.

2.6 Design Criteria

2.6.1 The A/E shall prepare, design and provide for Services in connection with the construction of the Project toward the following objectives:

- a. That the Project shall be attractive and functional and have an efficient utilization of space;
- b. That the Project shall be economical to construct, operate and maintain, at the minimum possible cost;
- c. That the Project shall be of sound structure of conventional shape or shapes, which avoid extraneous features and excessive perimeter walls;
- d. That the Project achieve economy in construction by simplification in design, by standardization in materials, by minimizing architectural embellishment, and the like, where appropriate.

2.6.2 The A/E shall give special attention to the economics of the interrelationship of architectural, structural, mechanical and electrical systems.

2.7 Project Coordination

2.7.1 The A/E shall serve as a member of the "Project Team" consisting of the Construction Manager, the University, the A/E and project consultants. The Project Team shall be led by the University or its designee.

2.7.2 The Project Manager assigned to the project will act as coordinator between the Agency user and the A/E.

2.7.3 Throughout the Project development, the A/E shall direct copies of all correspondence, drawings, specifications, estimates and other matters to the Project Manager who will furnish such information as necessary to others. Direct contact or communication by the A/E shall be made only with the prior knowledge and concurrence of the Project Manager, in each instance.

2.7.4 Unless other wise indicated, all correspondence shall be in triplicate.

2.7.5 The A/E's professional team for the Project shall be the same persons identified as stated in the team data submitted in response to the solicitation unless a change is requested and approved in advance in writing by the University.

2.7.6 During each of the phases, the A/E shall (i) present its work on an ongoing basis to the University and to the Construction Manager and (ii) be responsive to their comments, suggestions, and remarks.

2.7.7 The A/E shall provide the University with the Monthly Progress Schedule in compliance with section 1.16 of the Procedure Manual.

2.8 Documents

2.8.1 The Provisions of this Section 2.8 apply to all documents that the A/E is required to produce under the Agreement.

2.8.2 The A/E shall develop all of the documents required under the Agreement in a timely manner and in accordance with the Agreement. All documents shall anticipate a complete Project contemplated in the Program ready for efficient and continued use. The A/E shall be responsible directly to the University and more particularly to the Owner's Representative, to whom the A/E shall direct all communications and submit all documents for approval and from whom the A/E shall receive directions concerning the Project and approval of all documents.

2.8.3 In the event the documents submitted by the A/E in satisfaction of the Schematic Design Phase, Design Development Phase, Construction Documents Phase, or Bidding Phase respectively are not approved in the form submitted, the A/E at its own expense shall revise the same until approved by the University. If the nature of the revisions required to be made by the A/E is caused by revising previously approved drawings and/or specifications to accomplish changes not initiated by the A/E, the A/E may be paid for effecting such revisions only as hereinafter provided. Revisions for which the A/E is entitled under the Agreement to request additional compensation shall not be commenced without written authorization of the University.

2.8.4 The A/E shall file, with the Project Manager, a certificate in duplicate on a form prescribed by the University before award of any construction contracts or commencement of any construction work, certifying that said contract documents are in compliance with the Building Code of the State of Maryland. After certificates have been filed with the University, contract documents shall not be changed in any respect, except with the written consent of the University.

2.8.5 Seal & Signature - All Contract Documents shall bear the seal and signature of the A/E and the seal and signature of each consultant to A/E.

2.8.6 It is the responsibility of the A/E to care for, protect and know the whereabouts of the tracings until they are finally delivered to the University, fully corrected as "as built" drawings.

2.9 Press Releases

The A/E shall not issue any press release to any publication, including newspaper or media, without first clearing the text with the University and obtaining the prior written approval of the University in each instance.

2.10 Project Number

The Project Number assigned to the Program must be used on all correspondence, drawings, specifications, estimates, shop drawings, and all other matters relative to the Project.

2.11 Construction Cost Estimates

2.11.1 The provisions of this section shall apply in each instance that the A/E is required under the Agreement to provide construction cost estimates.

2.11.2 Cost Estimates must be furnished by the A/E at each of the following phases of the Services as more particularly set forth in articles IV through VI:

- a. 100% Schematic Design Phase

- b. 100% Design Development Phase
- c. Construction Document Phase, where the contract documents are approximately 50% complete and submitted for review.
- d. Intentionally omitted.
- e. Notwithstanding anything herein to the contrary, the construction cost estimate prepared by the A/E shall be reconciled with the Construction Manager's cost estimate at the designated intervals noted above with the exception of the 50% CD estimate. The cost estimate format must be developed between the A/E and the CM and approved by the University prior to the 100% SD submittal. The provisions of section 6.4 shall govern the content of the A/E's review.

2.11.3 The University may require revision or restudy of any of the construction Cost Estimates as may be necessary to keep the project within the budget or to require more realistic figures.

2.11.4 Unless otherwise provided in the Program, each and every construction Cost Estimate delivered to The University by the A/E shall be prepared by a professional cost estimator retained by the A/E, at the A/E's cost.

2.11.5 Each construction Cost Estimate shall show the cost as of its respective submission dates, escalated to the anticipated Bid-Due Date as set forth on the Schedule, with contingencies, fees, etc. so that each estimate reflects a Total Project Estimate of Cost.

2.11.6 Revised estimates may be further required by The University, particularly when a delay occurs between the time of submission and bidding.

2.11.7 All estimates shall reflect all additions and deletions during the various design phases.

2.12 Measurements.

The A/E shall comply with the provisions of Division I, section 12 of the Procedure Manual.

2.13 Compliance with Codes.

The A/E shall perform the services that (i) the Project if as where constructed according to the Documents, (ii) the construction of the Project; each shall be in compliance with:

- a. Those matters identified in Section 11 of the Procedure Manual;
- b. Those matters identified in the Program;
- c. Other pertinent laws, rules and regulations of the State of Maryland;

- d. The University requirements.

2.14 Sub-surface Investigation and Evaluation.

Unless otherwise provided in the Program, the A/E shall comply with and perform the work referred to in Division I, Section 13 of the Procedure Manual.

2.15 Sediment Control.

The A/E shall comply with and perform the work referred to in Division I, Section 14 of the Procedure Manual.

2.16 Sanitary Facilities.

The A/E shall comply with and perform the work referred to in Division I, Section 15 of the Procedure Manual.

2.17 Value Engineering.

The A/E shall perform value engineering as required by the solicitation documents; see 2.5.5 of this agreement.

2.18 Life Cycle Cost Accounting and Energy Conservations.

In connection with the Services, the A/E shall comply with Division I, Section 10 of the Procedure Manual.

2.19 Procedure Memoranda.

From time to time as may be appropriate, the University may issue standards or regulations relative to design and/or construction of improvements. These regulations will be issued in the form of numbered Procedure Memoranda (PM) and the A/E shall be obligated to perform the services in accordance therewith. In the event compliance with a Procedure Memorandum issued after the date of the Agreement directly results in a change in the scope of the S Services such changes shall be incorporated, at the A/E's request, in a Change Order. The Procedure Memoranda in effect as of the date of the Agreement are set forth in Division III of the Procedure Manual.

ARTICLE III

FUNDS AVAILABLE, FEES AND PAYMENT

3.1 Available Funds. Funds are available to be used for the Services during the design of the project in an amount equal to the fees and reimbursable amounts, if any, set forth in Exhibit A of the Agreement. The fees and reimbursables, amounts, if any, to be paid to the A/E in connection with future phases of the design (design development, construction documents, bidding, construction administration, and post construction) shall be subject thereto and the availability of funds. (See Item 2.1.4 for the project phases applicable to the University of Maryland Baltimore Campus Center Project.) The A/E understands that the funds available under the Agreement, and the Agreement if amended by Project Phases Amendment(s) are to include all fees and expenses whatsoever payable to and incurred by the A/E under the Agreement.

3.2 The amount of the funds originally available under the Agreement shall be set forth in Exhibit A attached hereto and made part hereof. Any and all amendments to that amount specifically shall be stated as such in Change Orders, agreements for Additional Services, the subsequent Project Phase(s) Amendment(s), or orders from the University to the A/E.

3.3 The compensation to be paid to the A/E for the Services including all fees and expenses shall be in a total amount as set forth in Exhibit B, attached hereto and made part hereof, payable only from funds available for the Services as stated in and subject to the Agreement.

3.4 The fees and reimbursables to be paid to the A/E for Additional Services and services provided under Change Orders shall be determined in accordance with Section 12.

3.5 The A/E's fees allocated to each phase shall be payable at the completion of the applicable phase with no retainer held. See 3.6 below regarding progress payments.

3.6 Notwithstanding anything in Section 3.5 to the contrary, the A/E may apply to the University by submitting invoices for payments on account against the fee allocated to each phase respectively at intervals not more frequently than monthly. The A/E will indicate the percentage of the Services in each phase for which payment is requested. The University will grant the application for payment only if the University agrees that the A/E has performed the indicated percentage of the Services. When required by the University, the A/E shall substantiate the degree of completion claimed in any such application for periodic payments, and furnish the University with copies of the documents evidencing the degree of completion claimed.

3.7 Reimbursables: The A/E may request reimbursements only for those matters identified in the Program as reimbursables. Reimbursements in the aggregate shall not exceed the amount set forth in Exhibit B attached hereto and made part hereof as allocated among the various phases. Along with invoices for fee payments, the University has the right to request substantiation to its satisfaction for any such requests.

3.8 The granting of the A/E's application for periodic payments by the University and the remittance thereof shall not constitute, in any sense, approval by the University for the percentage of Services completed for such phase, or any part thereof, such approval being expressly reserved to the University upon the completion of each phase.

3.9 If any construction work is deleted from the Project, or the Project is substantially revised, and the deletion or revision requires the A/E to render additional professional services, allows the A/E not to perform all Services originally contemplated, or both, that modification to the scope of the A/E's engagement shall be a Change Order.

3.10 Preparation of documents required for alternate bids shall not normally entitle the A/E to additional compensation. But, if the nature of the alternate bids or proposals requires the extensive preparation of separate drawings and/or specifications, and the Program did not refer to the need to prepare such, the A/E may request a Change Order.

3.11 The compensation payable to the A/E under the Agreement may be reduced by reason of additional costs of constructing the Project incurred by the University or the using agency, as a result of A/E's errors in, or improper coordination of, the Construction Documents. The amount of such reduction in compensation, if any, shall not exceed the amount of such additional costs incurred in connection with constructing the Project. Reduction of the compensation to the A/E as contemplated in this Section shall not be deemed to be a waiver by the A/E of any rights and remedies it may have in connection with such reduction.

3.12 If the Project is abandoned or curtailed, or if the University cancels the Agreement at any time for reasons other than default by the A/E, the A/E shall be paid a proportionate part of the compensation due and payable to the A/E at the completion of the phase wherein said abandonment, curtailment or cancellation occurs. Notice of abandonment, curtailment or cancellation may be oral, but shall be confirmed in writing within 30 days by the University, at which time the A/E shall immediately file with the University prints and other data substantiating the status of the Services performed to the date of such action.

3.13 Upon all applications for periodic payments of compensation, excepting only the first such application, the A/E shall certify in writing to the University that all consultants, the extent of whose work comprised a portion of the prior applications for periodic payment, were paid in full to the extent paid by The University to the A/E within ten (10) days from receipt. All A/E invoices to the University shall set forth the A/E's Federal Employer Identification Number.

3.14 Except as specifically provided otherwise in the Agreement, in the event of any additions or changes in the Services which cause an increase or decrease in the A/E's cost of, or time required for performance of, any service under the Agreement, those additions or changes, if ordered or agreed to by the University shall be Change Orders.

3.15 Adjustments to the A/E's compensation, if permitted under the Agreement, will be determined only by way of Change Orders and shall be based upon the hourly rates set forth in the Final Fee Proposal or, at the University's sole and absolute discretion established through subsequent negotiation between the A/E and the University.

3.16 The A/E shall submit each request for payment on the form provided by the University. The original and three copies must be submitted in each instance.

3.17 The A/E accompanying each Request For Payment, shall submit one copy of the current Monthly Progress Schedule.

3.18 All Services set forth in connection with a phase or a prior phase must be completed prior to payment in full for the fees allocated to each phase, except for the rendering(s) and 3-D model, which are part of the Design Development Documents, which shall be delivered during the Construction Document Phase as contemplated in Section 5.2.

ARTICLE IV

SCHEMATIC DESIGN PHASE

4.1 This Article IV applies specifically to the Schematic Design Phase, but is in addition to and not instead of any and all provisions of the Agreement applicable to the Schematic Design Phase or all phases.

4.2 The A/E Schematic Design Phase shall commence on the A/E Commencement Date and terminate on the date of acceptance by The University of the Schematic Design Documents but no later than the applicable date set forth in the Schedule. Acceptance of the Schematic Design Documents shall be effective upon the A/E's receipt of the University's written approval.

4.3 In rendering professional services for preparation and furnishing of the Schematic Design Phase requirements, in addition to any other matters the A/E deems appropriate or necessary, the A/E shall (i) visit the site of the Project, (ii) become familiar with the use, operational conditions and limitations of the site, and (iii) obtain measurements and other information relative to existing improvements as required in the Program.

4.4 In accordance with the Schedules, the A/E shall prepare and submit for the University's approval documents ("Schematic Design Documents") to illustrate the size and relationship of the Project components, as follows:

a. A sketch site plan showing the Project structures, as related to the existing and proposed utility lines, roads, walks, grades, parking facilities and other structures in the immediate vicinity, as well as the relationship of the Project to the future improvements which are not a part of this Project, but which are intended to become a part of a larger and more comprehensive development of the site upon which this Project is to be located and become a part.

b. Photographs of the Project site, adjacent structures and surrounding area, to generally record the nature and character of the environment.

c. Schematic single line floor plans indicating the general space layout, block elevations and sections, and a narrative description of the structural, mechanical and electrical systems.

d. A single line perspective or isometric drawing or a simple block model as required in the Program.

4.5 As part of the Schematic Design Documents, the A/E shall provide to the University a construction cost estimate, the Probable Construction Cost shall not exceed the Project Construction Cost. In the event that it does, the A/E, without additional compensation, in conjunction with the Construction Manager and the University, shall re-design the Project as necessary to maintain the Project Construction Cost.

4.6 When directed by the University, the data generated by the A/E in this phase shall be reviewed by the State Board of Architectural Review prior to acceptance by the University.

ARTICLE V

DESIGN DEVELOPMENT PHASE

5.1 This Article V applies specifically to the Design Development Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Design Development Phase or all phases.

5.2 The Design Development Phase will commence with the submission of the Schematic Design Documents and will terminate upon acceptance by the University of the Design Development documents (saving and excepting the rendering and model), but no later than the applicable date indicated on the Schedule. Acceptance of the Design Development Documents shall be effective upon the A/E's receipt of the University's written approval.

5.3 Upon commencement of the Design Development Phase, the A/E shall prepare the following items ("Design Development Documents"):

- a. Drawings and other data comprising the product of the Schematic Design Phase, including all floor plans, elevations and cross sections.
- b. A site development plan indicating the Facility structures as related to the existing and proposed utility lines, roads, walks, grades, parking facilities and other structures in the immediate vicinity.
- c. In lieu of Outline Specifications set forth in DGS' Procedure Manual, a basis of design stating the proposed materials, methods and systems, including structural, mechanical and electrical, to be incorporated in the Facility.
- d. Professionally prepared color perspective rendering(s) per the final fee proposal in a suitable medium when required by the Program. The rendering shall include related existing improvements, which may have an aesthetic bearing on the project. This rendering, approved by the University, shall be delivered to the University not later than completion of 50% of the Construction Documents Phase.

5.4 As part of the Design Development Documents, the A/E shall prepare a construction cost estimate based upon a labor and material take-off. The A/E shall make this take-off from the other Design Development Documents, applying costs currently prevailing in Baltimore County. The Probable Construction Cost shall not exceed the Project Construction Cost for the applicable Project Phase. In the event that it does, the A/E, without additional compensation, in conjunction with the Construction Manager and the University, shall re-design as necessary to maintain the Project Construction Cost.

5.5 When directed by the University, the materials generated by the A/E in this phase shall be reviewed by the State Board of Architectural Review prior to acceptance by the University.

ARTICLE VI

CONSTRUCTION DOCUMENTS PHASE

6.1 This Article VI applies specifically to the Construction Documents Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Construction Documents Phase or all phases.

6.2

a. The Construction Documents Phase will commence with the acceptance of the Design Development Documents [saving and excepting the professional rendering(s) and professional computer model each of which shall be delivered as required in Section 5.3 (d)] and will terminate upon acceptance by the University of 100% Construction Documents but not later than the applicable date indicated on the Schedule. Acceptance of 100% Construction Documents shall be effective upon the A/E's receipt of the University's written approval.

6.3 Upon commencement of the Construction Documents Phase, the A/E shall prepare the required set of architectural, site, structural, mechanical and electrical drawings and specifications ("Construction Documents").

6.4 As part of the Construction Documents, the A/E shall prepare for the University's approval a statement of review of the Construction Manager's cost model updates as required in Section 2.11 of the Agreement. A professional cost estimator shall be retained by the A/E for this purpose and shall use prevailing Baltimore County costs and area/volume calculations. The A/E shall prepare a detailed written review which will state if the A/E accepts or rejects the Construction Manager's cost model updates under review and shall include in detail (i) the reasons that the Construction Manager's cost model update was rejected or accepted; (ii) a summary of the significant differences between the Construction Manager's current cost model and the next previous Construction Manager's cost model and the A/E's construction cost estimates provided in the Design Development Phase; and (iii) such other matters as the A/E deems appropriate. The A/E must reject the Construction Manager's cost model update if it exceeds the Project Construction Cost. Six (6) copies of the statement of review and supporting documentation shall be made available to the University.

6.5 If, in the exercise of the A/E's professional judgment, the A/E finds that such Probable Construction Costs set forth in the cost model update prepared by the Construction Manager will exceed the Project Construction Costs, and if the A/E is unable to effect cost reduction revisions in the Construction Documents without deviating from the design and intent of the previously approved documents, the A/E: (1) shall advise the University in writing; and (2) shall await instructions which the University shall issue to the A/E concerning future action to be taken under the Agreement. The instructions issued by the University at its sole discretion shall include redesign of the Project as necessary in conjunction with the Construction Manager and the University to meet the Project Construction Cost without additional compensation.

6.6 The A/E will utilize the standard Construction Specifications Institute (CSI) specification layout and numbering system. The A/E will include in the appropriate section the University General Conditions for Construction, which the University shall provide to the A/E.

6.7 Upon completion of Construction Documents, the A/E will submit one (1) reproducible of the documents to the University for review and approval. The Construction Documents will be provided in two phases due to the funding of the project. Each phase is to be separated into a) the building and b) the utilities for the applicable phase.

6.8 When directed by the University, the data generated by the A/E in this phase shall be presented and reviewed by the State Board of Architectural Review, Fire Marshall and any other agencies as required by the Program prior to acceptance by the University.

ARTICLE VII BIDDING PHASE

7.1 This Article VII applies specifically to the Bidding Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to The Bidding Phase or all phases.

7.2

a. The Bidding Phase will commence with the University's acceptance of the Construction Documents and will terminate upon acceptance of the Guaranteed Maximum Price by the University but no later than the applicable date as indicated on the Schedule.

b. Notwithstanding anything herein to the contrary, at the University's sole discretion, the Bidding Phase shall commence (i) solely in connection with the work referred to in the First Project Phase Package (separated by building and utilities), upon the University's acceptance of the First Project Phase Package and (ii) in connection with the work referred to in the Second Project Phase Package (separated by building and utilities) upon the University's acceptance of the Second Project Phase Package. Commencement of The Bidding Phase as contemplated in this Section 7.2.b, if authorized by the University, shall not relieve the A/E in any manner whatsoever from its obligations to comply with Section 6.4 and 6.5 at the times designated, determined in experience to all Construction Documents.

7.3 At the commencement of the Bidding Phase, the A/E shall provide the University, for bidding and construction purposes, one reproducible copy of the 100% Construction Documents.

7.4 The Construction Manager shall request bids for the Construction of the Project in those bidding packages identified in the Program.

7.5 The A/E shall interpret documents during the Bidding Phase and shall attend a pre-bid conference for each bidding package.

7.6 The A/E shall attend the opening of the bids received by the Construction Manager in connection with the Project.

7.7 If the Guaranteed Maximum Price ("GMP") proposed by the Construction Manager exceeds either (i) the Project Construction Costs or (ii) either the funds appropriated by the Legislature or allocated by the using agency or the University System of Maryland the construction of the Project, the A/E shall analyze the bids or proposals and make recommendations to the University as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed said appropriation or allocation, except as agreed to or directed in writing by the University. Such recommendations shall not include any deletions which render the Project incomplete (except to the extent contemplated by the Program) except as agreed to or directed by the University. In addition, the A/E, after consultation with the University, shall alter or redraft the Construction Documents as necessary to accomplish the necessary reduction in cost and shall repeat as necessary or appropriate the services provided in this or other phases.

7.8 In the event that the GMP exceeds the funds appropriated by the Legislature or allocated by the Using Agency or USM, the University, for the construction of the Project due to a delay in the bidding of the project, the services the A/E is required to perform as contemplated in Section 7.6 may be submitted by the A/E for consideration in a Change Order. However, in the event that the CM's GMP Amount exceeds the funds appropriated or allocated for construction of the Project no adjustment shall be made to the A/E's compensation if bidding was delayed because of A/E's failure to perform its obligations under this Agreement.

ARTICLE VIII

CONSTRUCTION PHASE

8.1 This Article VIII applies specifically to the Construction Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Construction Phase or all phases.

8.2 The Construction Phase will commence on the A/E Construction Commencement Date and terminate on the date of final acceptance by the University of the construction of the Project, but no later than the applicable date indicated on the Schedule.

8.3 Upon commencement of the Construction Phase, the A/E shall undertake the Services as set forth in the Program required during the Construction Phase.

8.4 The A/E shall consult with the University as the construction of the Project progresses. All of the University's and the A/E's instructions to the Construction Manager shall be issued by the University, through the Project Manager, or by another designated representative of the University.

8.5 The A/E shall make periodic visits to the Project as required by the progress of the construction work or as requested by the University and shall attend progress meetings to attain familiarity with the progress and quality of the construction and to determine in general if the construction of the Project is proceeding in accordance with the Construction Documents. In making such periodic visits to the site and on the basis of such on-site observations the A/E shall guard the University against defects and deficiencies in the construction work and shall report to the University any observed defect or observed deficiency.

8.6 The A/E shall not be responsible for (i) construction means, methods, techniques, sequences and procedures, or for safety precautions and programs in connection with the construction, (ii) the Construction Manager's failure to carry out the construction in accordance with the Construction Documents, (iii) and the acts or omissions of the Construction Manager or any subcontractors, or any of the Construction Manager's or subcontractors' agents or employees, or any persons performing any of the construction, saving and excepting to the extent the A/E has approved the same or has knowledge of the same and has not made a report thereof to the University.

8.7 The A/E shall assist the University, as it may request, in interpreting the requirements of the Construction Documents, in making decisions on all claims of the University or the Construction Manager relating to the execution and progress of the construction, and on all other matters or questions related thereto.

8.8 The A/E shall recommend to the University rejection of construction that, in the A/E's reasonable opinion, does not conform to the Construction Documents. The A/E shall recommend that the University require the Construction Manager to stop the construction whenever, in the A/E's reasonable opinion, it may be necessary for the proper performance of the construction. In discharging the foregoing responsibility, the A/E shall act through the University and issue such recommendations to the University.

8.9 The A/E shall review and take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. The A/E's action shall be taken within two (2) weeks of receipt so as to cause no delay in the work, while allowing sufficient time in the A/E's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining accuracy and completeness or other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Construction Documents except as may be grossly different from the Construction Documents. The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of construction means, methods, techniques, sequences or procedures. The A/E's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Documents, the A/E shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Documents.

8.10 The A/E shall assist the University in reviewing requests for change order for the construction of the Project with regard to scope only.

8.11 The A/E shall provide drawings as may be necessary to explain construction details.

8.12 The A/E shall assist the University in the preparation and review of punch lists.

8.13 The A/E shall prepare a full set of record drawings showing the "as-built" condition of the Project (including, but not limited to, the locations of all utilities) based on the A/E's own records of change orders and upon as-built information supplied by the Construction Manager. The University will require the Construction Manager to keep up-to-date marked prints of the as-built conditions upon the Construction Manager's copy of the Construction Documents, with all notations necessary to form the basis of the record drawings prepared by the A/E. The A/E will notify the University in writing not later than four (4) weeks after substantial completion of the Project of any information required to prepare the record drawings that has not been supplied by the Construction Manager. Record drawings shall be turned over to the University within four

(4) months of substantial completion of the Project or in the event that the A/E has given The University the notice, contemplated above, within four (4) months after receipt of all information from the Construction Manager. In addition to the reproducible manual record drawings, the A/E shall supply record drawings on floppy disk(s) for AutoCAD 2000 or later to the University for CADD generated drawings as set forth in the Proposal. The A/E's fee associated with record drawings shall not be due until reproducible record drawings and AutoCAD disks are submitted to the University and approved by the University.

ARTICLE IX
POST-CONSTRUCTION PHASE

9.1 This Article XI applies specifically to the Post-Construction Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Post-Construction Phase or all phases.

9.2 The Post Construction Phase shall commence upon the termination of the Construction Administration Phase and shall terminate upon complete performance of all obligations on the part of the A/E under the Agreement.

9.3 During the first year of the prescribed warranty period applicable to the Construction Manager's work, the A/E representative shall make one (1) visit to Project for Project Building Phase 1 and Utilities Phase 1 and one (1) visit to the Project for Building Phase 2 and Utilities Phase 2 as required in the Program on a date or dates specified by the University. The purpose and intent of such visits is to aid the University in resolution of warranty claims. The University at its sole discretion may request the A/E's advice concerning corrective action(s) to be taken by the University and by the Construction Manager or both, and the A/E shall provide the University with a written report of any visits.

9.4 The A/E shall provide the insurance required in Section 12 throughout the Post-Construction Phase.

ARTICLE X
ASSISTANCE BY THE UNIVERSITY

10.1 Unless otherwise specifically stated in the Program or the Agreement, the University will furnish to the A/E in a timely fashion or at the University sole discretion reimburse the A/E for the cost of furnishing:

- a. A complete and comprehensive written Project Program.
- b. Laboratory or other tests required by the University to obtain basic data.
- c. All notices and/or advertisements advising of requests for bids by the Construction Manager.
- d. All Standard Payment Request contract, bond, change order and other standard forms to be used by the A/E in performing the services. Notwithstanding anything herein to the contrary, the University shall provide the A/E with a sample of those standardized forms and the A/E shall make copies for its use from time to time as necessary. In the event a standard form is not provided, the A/E shall use its own forms, provided the same are reasonably satisfactory to the University.
- e. Receipt and tabulation of all bids by the Construction Manager.
- f. All necessary approvals for the orderly progress of Services in accordance with the Schedule.

10.2 The University will prepare for execution and transmit to the A/E, Construction Manager and other parties concerned all contract forms and Change Order forms, when approved.

ARTICLE XI

OWNERSHIP OF DOCUMENTS

11.1 All documents, which are prepared by the A/E and form a part of the Services are the property of the University and shall be delivered to the University upon completion of the Project. In addition, all documents in progress are the property of The University and shall be delivered to the University promptly in the event of termination of the Agreement prior to completion of the Project. The A/E shall be responsible for the protection and/or replacement of any Construction Documents or other documents, as described in the various phases of the Services, in its possession. The University shall receive all original drawings and the A/E shall retain a reproducible copy.

11.2 The drawings, specifications and other documents prepared by the A/E pursuant to the Agreement shall not be used by the University or others on other projects, for additions to the Project or for completion of the Project by others, unless the A/E is adjudged to be in default under the Agreement, except by agreement in writing and with appropriate compensation to the A/E.

11.3 In the event that the Agreement is in connection with one or more Project Phases but less than the entire Project, and notwithstanding anything herein to the contrary, the Contract Documents shall be used, in the University's sole discretion, without the consent of and without additional compensation to the A/E, for design and/or construction of the portion of the Project not covered by the Agreement.

11.4 In the event that the Agreement is in connection with one or more phases but less than all phases identified in the Program, the Contract Document shall be used, in the University's sole discretion, without the consent of and without additional compensation to the A/E for the services to be performed as part of those phases not included in the Project as defined in the Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Termination for Default. If the A/E fails to fulfill its obligations under the Agreement properly and on time, or otherwise violates any provision of the Agreement, the University may terminate the Agreement by written notice to the A/E. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished documents, supplies and services prepared or provided by the A/E shall be The University's property. The University shall pay the A/E fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by A/E's breach. If the damages are more than the compensation payable to the A/E, the A/E will remain liable after termination and the University can affirmatively collect damages. Termination of the Agreement as contemplated in this section shall not be deemed to be a waiver by the A/E of any rights and remedies it may have.

12.2 Transfer of A/E's Responsibilities. The A/E may not assign the Agreement or transfer any interest in the Agreement except with the written approval of the University.

12.3 Substitution. In the event that any cause or reason whatsoever necessitates substitution by the University of another person or firm in place of the A/E hereto in order to complete the Services, the University in its sole discretion shall determine the division of the fee between the substitute and the A/E.

12.4 Waiver. The University in its sole discretion may but is not obligated to waive specific minor provisions of the Agreement on specific request by the A/E, in the interest of expediting the Project. Any such waiver shall be in writing and shall not constitute justification for the A/E preparing an incomplete design or constitute a waiver of any liability ensuing therefrom. The A/E shall not be entitled to any waiver granted in any individual instance as evidence that a waiver is available or has been granted in any other instance, or all instances.

12.5 A/E Changes. The A/E must notify the University immediately of any major changes in its organization or personnel. A major change includes a change of the personnel identified in the Program or in any or all of those persons being unavailable to perform the services as indicated in the Program. A change in personnel identified in the Program requires the written approval by the University via the issuance of an amendment to the A/E Agreement.

12.6 Disputes.

a. The Agreement is subject to the provisions of USM Policies and Procedures (Dispute Clause)("the USMPP"). Remedies). As noted therein, that unless a lesser period is provided by applicable statute, regulation, or by the Agreement, the A/E shall file a written notice of a claim relating to the Agreement with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with, or within thirty (30) days after, the filing of a notice of a claim, but no later than the date that final payment under the Agreement is made, the A/E shall submit to the appropriate Procurement Officer its written claim.

b. Except as may otherwise be provided in this contract or by law, all disputes arising under or as a result of a breach of the Agreement which are not resolved by mutual agreement shall be resolved in accordance with this clause.

c. 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 contract terms, or other relief, arising under or relating to the Agreement.

1. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause.

2. A claim by the A/E shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General. A claim by the University shall be the subject of a decision by the Procurement Officer.

d. When a controversy cannot be resolved by mutual agreement, the A/E shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.

e. In connection with any claim under this clause, at the direction of the Procurement Officer the A/E may be afforded an opportunity to be heard and to offer further evidence in support of its claim to the Procurement Officer.

f. The Procurement Officer shall render a written decision on any claim within 180 days of its receipt unless the Procurement Officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the A/E, 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. If a decision is not issued within 180 days, the Procurement Officer shall notify the A/E of the time within which a decision shall be rendered and the reasons for such time extension.

g. The Procurement Officer's decision shall be final and conclusive unless the A/E files a written appeal with the Maryland State Board of Contract Appeals within thirty (30) days of receipt of said decision.

h. Pending resolution of a claim, the A/E shall proceed diligently with the performance of the Agreement in accordance with the Procurement Officer's decision.

i. If a dispute is appealed to the Maryland State Board of Contract Appeals during a time that there is docketed before said Board an appeal concerning the same or a similar dispute between the University and the Construction Manager, then the A/E and the University agree to seek a consolidation of those appeals.

12.7 Crimes Related to Procurement of the Work. In the event that A/E, or any of its officers, partners, principals or employees, is convicted of a crime arising out of or in connection with the procurement of work to be done or payment to be made under the Agreement, the Agreement, in the discretion of the University, may be terminated. Upon such termination the A/E shall be paid only the earned value of work performed to the date of termination and shall refund any and all profits, or fixed fee, realized under the Agreement, and the A/E shall be liable to the University for any costs incurred by it over and above the maximum amount payable to the A/E as set forth in the Agreement, in completing the work undertaken by the A/E in the Agreement. The sanctions provided hereunder shall be applicable, as appropriate in the discretion of the University, to any such conviction after the expiration of the term of the Agreement as well. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered or construed as a waiver of, any other rights or remedies granted or available to the University.

12.8 Covenant Against Employment of State Personnel. No employee of the University or any department, commission, agency or branch of the State of Maryland, whose duties as such employee include matters relating to or affecting the subject matter of the Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with the University.

12.9 Non-Discrimination. The A/E 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 handicap 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.

12.10 Changes in the Work.

a. The Procurement Officer may, at any time, by written order designated or indicated to be a Change Order, make any change in the Services within the general scope of the Agreement.

b. Any other written order from the Procurement Officer or the Owner's Representative which causes any such change shall be treated as a Change Order under this Section, provided that the A/E gives the Procurement Officer written notice stating date, circumstances, and source of the order and that the A/E regards the order as a Change Order. Such notice must be given within fourteen (14) days of A/E's receipt of the written order.

c. Any change in the Services which is indicated elsewhere in the Agreement to be a Change Order, or which shall be treated as a Change Order under the Agreement, shall be treated as a Change Order under this section, providing that the A/E gives the Procurement Officer written notice stating all, circumstances and source of change and that the A/E regards the change to be a Change Order. Such notice must be given within fourteen (14) days of A/E's receipt of the written order.

d. Except as herein provided, no order, statement, or conduct of the Procurement Officer or the Project Manager shall be treated as a change under this clause or entitle the A/E to an equitable adjustment hereunder unless a written change order has been completed and signed by all parties to the Agreement.

e. All Change Orders shall be set forth on the designated University form or a replacement thereof and shall be completed and signed by the parties to the Agreement.

f. If any change under this clause causes an increase or decrease in the A/E's cost of, or the time required for, the performance of any part of the Services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly.

g. No claim in connection with a Change Order shall be allowed for any costs incurred by the A/E more than twenty (20) days before the A/E gives written notice as required in this Section 12.10a, b, or c.

h. If the A/E intends to assert a claim for an equitable adjustment for a Change Order, he shall within 30 days after receipt of that Change Order under Section 12.10a, or the furnishing of written notice under Section 12.10b and c above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period may be extended by the University. The statement of claim hereunder may be included in the notice required from the A/E under Section 12.10b and c.

i. Each amendment to the Agreement and each Change Order that results in an increase in the total amount due to the A/E under the Agreement shall be subject to the prior written approval of the Procurement Officer, The Project Manager, and the using agency, and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or Change Order on the amounts due to the A/E. If, according to the certification of the fiscal authority, the modification or the Change Order in question will cause an increase in cost that will exceed budgeted and available funds, that modification or Change Order may not be made unless sufficient additional funds are made available or the scope of the Services is adjusted to permit performance within the amounts payable to the A/E.

j. No claim by the A/E for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Agreement.

12.11 Audit and Retention of Records. The Agreement is subject to audit by the University, and the A/E agrees to make all of its records available to the University upon request. The A/E will retain all records related to performance of the Agreement until the end of the period three years following termination of the Agreement or of a subsequent agreement between the University and the A/E for professional services for the balance of the Program, whichever is later.

12.12 Governing Law. The provisions of the Agreement shall be governed by the laws of the State of Maryland.

12.13 Applicable 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 Policies and Procedures in effect on the date of execution of the Agreement are applicable to the Agreement.

12.14 Termination or Suspension of Services.

a. The performance of the Services may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the Procurement Officer shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with the Agreement that the A/E has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the A/E shall not be reimbursed for any anticipatory profits or fees that have not been earned up to the date of termination.

b. The University's Procurement Officer may suspend, delay or interrupt all or any part of the Services for such time as the Procurement Officer determines to be appropriate for the convenience of the University.

12.15 Contract Affidavit. The A/E shall execute the attached Contract Affidavit as part of the Agreement.

12.16 Financial Disclosure. The A/E shall comply with the State Finance and Procurement Article, 13-221, 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, 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 information, to include disclosure of beneficial ownership of the business.

12.17 Reports of Political Contributions. The A/E shall comply with the provisions of Article 33, Sections 30-1 through 30-4, Annotated Code of Maryland, which require that every firm entering 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 under which the firm will receive in the aggregate \$100,000 or more, shall file with the State Administration Board of

Election Laws a statement disclosing contributions in excess of \$500.00 made during the reporting period to any 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 order 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.

12.18 Observance of Rules. Employees and agents of the A/E shall comply with all rules and regulations of the University or the using agency while on the premises of the University or the using agency respectively. The A/E shall not interfere with the University, or the using agency's operations or stop, delay or interfere with use of any of the University's facilities without prior approval.

12.19 Avoidance of Labor Disputes. In performance of the Agreement, the A/E shall not knowingly employ any person or persons, or use any equipment or materials, or allow any condition to exist, if any such, in the opinion of The University, may cause or be conducive to any labor complaints, trouble, dispute or controversy at the University or in any other respect may be objectionable to the University. The University's determination shall be conclusive on the A/E and upon notice from the University the A/E shall immediately withdraw from The University property as required in the notice all persons, equipment or materials specified in the notice, shall replace them with unobjectionable persons, equipment and materials, and shall immediately rectify whatever condition or conditions may be specified in the notice.

12.20 FLSA. The A/E agrees that it will comply with the provisions of the Fair Labor Standards Act of 1938, as amended, and all other applicable Federal, State, City and local laws, ordinances, regulations and codes, in the performance of the Agreement, and the A/E further agrees to defend, indemnify and hold harmless the University for any loss or damage that may be sustained by reason of A/E's failure to do so.

12.21 Non-Appropriation. If the General Assembly fails to appropriate funds or if funds are not otherwise made available by the University for continued performance for any fiscal period of the Agreement (including any extensions hereof) succeeding the first fiscal period, the 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 University's rights or the A/E's rights under any termination clause in the Agreement. The effect of termination of the Agreement hereunder will be to discharge both the A/E and the University from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The A/E shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The University shall notify the A/E as soon as it has knowledge that funds may not be available for the continuation of the Agreement for each succeeding fiscal period beyond the first.

12.22 Payments. Payments to the A/E pursuant to the Agreement shall be made no later than 30 days after the University's receipt of a proper invoice from the A/E. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the Article, are prohibited.

12.23 Delays and Extensions; Liquidated Damages.

a. The A/E 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 work as specified in this Contract

b. Time extensions will be granted by the Procurement Officer only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the A/E, including but not restricted to, acts of God, acts of the public enemy, acts of the State in its sovereign or the University in its contractual capacity, acts of another contractor in the performance of a contract with the University, 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 the A/E or its subcontractors, consultants, or suppliers.

c. Time is of the essence in the Agreement. For each day that the Services or any portion thereof remain uncompleted beyond the times specified in the Schedule or elsewhere in the Agreement, the A/E shall be liable for liquidated damages in the amounts provided in the Program, provided however, that due account shall be taken of any adjustment of specified completion time(s) for completion of the Services or any portion thereof as provided in the Agreement.

12.24 Additional Representations. The A/E 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 the Agreement;

c. It shall comply with all documented federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under the 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 the Agreement.

e. It has not employed or retained any person, partnership, corporation or other entity, other than a bona fide employee or agent working for the A/E, to solicit or secure the 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 the Agreement, other than the wages of a regular employee or agent of the A/E.

12.25 Truth in Negotiation Certificate. The A/E certifies to the best of its knowledge, information and belief, with respect to wage rates or other factual unit costs, if any, submitted in its proposal or any supplementary information, that:

a. Such 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 date of execution of the Agreement.

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 University 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 consultant or subcontractor.

c. If additions are made to the original price of the Agreement, 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.

12.26 Professional Liability Insurance. The A/E shall obtain and maintain professional liability insurance, specifically covering the A/E's obligations performed or to be performed under the Agreement, in the amounts, for the time(s) and under the conditions set forth in the solicitation documents. Failure to do so shall be a material breach of the A/E's obligations under the Agreement. In the event that the A/E terminates, as a business entity, for any reason whatsoever, or in any manner whatsoever, the A/E shall obtain and provide for the maintenance of professional liability insurance, specifically covering the A/E's obligations performed or to be performed under the Agreement, in the amount set forth in the Program, for the remainder of the time set forth in the Program. The A/E shall have delivered to the University, prior to the A/E Commencement Date and as a condition of the Agreement, a copy of any and all policies obtained in accordance with the Agreement and a certificate of insurance setting forth that the stated insurance is then in effect thirty (30) days prior to the expiration or termination of any insurance policy obtained by the A/E pursuant to the Agreement, the A/E shall deliver to the University an insurance binder evidencing continued insurance coverage as required hereunder and a certificate of insurance on the effective date of the replacement policy. The insurance policy obtained as required herein and any certificate provided a required hereunder shall be endorsed to provide that the insurance obtained shall not be terminated and shall not expire unless the Procurement Officer has received not less than thirty (30) days written notice.

12.27 Contractual Relationship. Nothing contained herein shall be deemed to create any contractual relationship between the A/E and the Construction Manager or any of its Contractors, Subcontractors, or material suppliers on the Project; nor shall anything contained in the Agreement be deemed to give any third party any claim or right of action against the University or the A/E which does not otherwise exist without regard to the Agreement.

12.28 Amendments. The Agreement may be amended by agreement of the authorized representatives of the parties. All amendments must be in writing and signed by the parties to the agreement.

12.29 Force Account Services. When the A/E is required to perform or have performed Additional Services as a result of Change Orders, the University and the A/E shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the Project Manager shall have the right to require the A/E to do or have done such work on a force account basis to be compensated in accordance with the following:

- (i) Labor -- For all personnel and for supervisors in direct charge of the specific work, the A/E shall receive the actual wages for each and every hour that said personnel are actually engaged in such work based upon the hourly rates set forth in the Program or, in the absence of such rates, upon a reasonable rate determined by the University. In addition the A/E shall receive the actual costs paid to, or in behalf of, personnel by reason of subsistence and travel allowances, health, welfare benefits, pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the personnel employed on the work.
- (ii) Consultants -- The A/E shall receive the actual cost of work performed by a consultant. A Consultant's cost is to be the cost of labor, determined as set forth in (i) above. An allowance will be made to the A/E for a consultant's overhead and profit in an amount to be determined as follows:

The allowance to the consultant for overhead and profit will be at the following scale:

<u>Value of Work Combined Overhead and Profit</u>	
0 - \$ 1,000	25%
\$ 1,001 - \$ 5,000	20%
\$ 5,001 - \$10,000	17%
\$10,001- \$25,000	15%
over - \$25,000	negotiated, but not more than 15%

(iii) An allowance will be made to the A/E for its overhead and profit in an amount determined as follows (but based solely upon the allowance for labor as set forth in (i) above):

<u>Value of Work Combined Overhead and Profit</u>	
0 - \$ 1,000	25%
\$ 1,001 - \$ 5,000	20%
\$ 5,001 - \$10,000	17%
\$10,001- \$25,000	15%
over - \$25,000	negotiated, but not more than 15%

12.30 Partnership as Joint Venture

In the event that the A/E is a joint venture or a partnership, the following provisions shall apply:

- a. The partnership or joint venture agreement shall not be terminated or amended in any material aspect prior to the final acceptance of the Project;
- b. There shall be no additions or withdrawals of partners or joint venturer in the A/E except for individuals who are admitted to partnership in the ordinary course of business,
- c. The insurance required under the Agreement shall be a joint and several obligation of all joint venturers and partners in the A/E.

12.31 Architectural Works Copyright Protection Article. The A/E hereby waives for the benefit of UMB and hereby transfers fully to UMB free and clear of any and all restrictions, liens and limitations whatsoever, any and all ownership rights and copyright rights and rights appurtenant thereto in any architectural works (as defined in the Architectural Works Copyright Protection Article, as amended from time to time) produced within the scope of the Agreement ("Architectural Rights"). The A/E shall cause the Architect of Record, each and every person employed by it, each of its officers, each and every consultant engaged by it, and each and every contractor engaged by it, all in connection to the Agreement who respectfully may have enjoyed or may in the future enjoy Architectural Rights to waive in writing for the benefit of UMB and to transfer fully to UMB free and clear of any and all restrictions, liens and limitations whatsoever any and all Architectural Rights that they, their employees, consultants, officers and agents may enjoy. The A/E, as a condition of payment from time to time, shall deliver to UMB the waivers and transfers executed as contemplated herein and a representation of the A/E that such writings have been obtained from each Architectural Rights Person. The A/E shall include a provision substantially like this Section 12.31 in its agreement with each consultant and contractor engaged by it in connection with the Agreement.

In addition, the A/E hereby waives its rights under 17 U.S.C. Section 106 or other sections of the United States copyright laws, as now in effect or as amended from time to time, with respect to UMB's use of the architectural works produced pursuant to the Agreement. This waiver shall be effective in the event that it is determined that the transfer of ownership of copyright is invalid or limited in scope so as to apply only to a portion of the architectural works.

To the extent permitted or consonant with law, the work product required by the Agreement shall be considered by the parties a work made for hire under the copyright laws of the United States and applicable common law. UMB shall have sole right and authority to seek statutory copyright protection and to enjoy the benefits of ownership of the title and interest in and to the work to UMB.

12.32 To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the University System of Maryland, the University of Maryland, Baltimore, the State of Maryland and the City of Baltimore, their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, or death personal injury or injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent or willful act or omission of the A/E, any, subcontractor, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party of person, described in this paragraph. This obligation is not intended to be or to imply a waiver of the sovereign immunity of the University System of Maryland and its constituent institutions or the State.

In any and all claims against the University System of Maryland and/or its constituent institutions or the State of Maryland or any of their agents or employees by any employee of the A/E, its agents or consultants, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the A/E or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Notwithstanding anything to the contrary, the obligations of the A/E under this paragraph shall extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agent or employees providing such giving or failure to give is the primary cause of the injury or damage.

12.33 The State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this agreement.

ARTICLE XIII
RIDERS

The following provisions modify the provisions of Article I - XII and the Procedure Manual, notwithstanding anything herein to the contrary:

IN WITNESS WHEREOF, the Agreement is executed for the parties by their authorized representatives or officers.

UNIVERSITY OF MARYLAND, BALTIMORE

BY: _____
Name (Printed):
Procurement Officer

DATE: _____

Witness: _____

BY: _____ (SEAL)
Name (Printed):
Firm Name: _____

DATE: _____

Witness: _____

BUDGETARY DATA:

Requisition No. _____

FAS _____

Title _____

Approved by Board of Public Works:
Item No. _____ Date: _____

UMB RFP NO. _____
CONTRACT NO. C-_____

**STANDARD FORM OF AGREEMENT WITH
ARCHITECTS AND ENGINEERS**

EXHIBIT A

Availability of Funds:

The University has available funds in the total amount of _____ Dollars (\$____) provided by Capital Appropriations funds to be used for architectural services in connection with the Design Project (Schematic Design through Construction Documents) It is understood that said funds are to include all fees and expenses of the A/E for these Design Phases of the Project. The stated funds may not be added to or supplemented except by appropriate University action.

**STANDARD FORM OF AGREEMENT WITH
ARCHITECTS AND ENGINEERS**

Page 1 of 2

EXHIBIT B

1. A/E Compensation for the Project:

The total fees to be paid to the A/E for Services for the Towson University Newell and Richmond Halls Renovation pursuant to the Agreement shall be _____ (\$_____) which shall be the total compensation for all phases of the project; it being understood that the total fee amount to be paid shall be divided among each of the phases as follows:

Phase	Basic Fee
Schematic Design Phase	\$
Design Development Phase	\$
Construction Documents Phase	\$
Bidding Phase	\$
Construction Administration	\$
Post Construction Phase	\$
TOTAL	\$

Phase	Special Fees
Finishes/Furniture	\$
Value Engineering	\$
Geotechnical Review	\$
Utility Analysis	\$
Energy Study	\$
Commissioning	\$
Cost Estimating	\$
Signage	\$
Design Review Board	\$
Site Survey	\$
Renderings	\$
Existing Drawings	\$
TOTALS:	\$
 TOTAL FOR BASE AND SPECIAL FEES:	 \$

2. **Expenses and Reimbursables**

Only as set forth in the Program and in an amount not to exceed _____ (\$ _____) which shall be allocated among the various phases as follows:

Phase	Cost
Schematic Design Phase	\$
Design Development Phase	\$
Construction Documents Phase	\$
Bidding Phase-	\$
Construction Administration Phase	\$
Post Construction Phase	\$
TOTAL:	\$

UM PROJECT NO.
CONTRACT NO. _____

**STANDARD FORM OF AGREEMENT WITH
ARCHITECTS AND ENGINEERS**

EXHIBIT C

Liquidated Damages shall be in the amount of \$750.00 per day and shall apply during the Design Project (Schematic Design through Bidding phases).

ATTACHMENT C

TOWSON UNIVERSITY CAMPUS MAP

**A Campus Map and Driving Directions are available at the following
Towson University Website:**

www.towson.edu/main/maps/