

**REQUEST FOR PROPOSALS #2021-004
DATA TRANSPORT SERVICES
RESPONSE ADDENDUM # 4
December 4, 2020**

CLARIFICATION

The term Contract for Services and Master Agreement are used interchangeably throughout the document.

MODIFICATION

Appendix E is modified below to line up with the Master Agreement numbering in Appendix D. Please use this version to respond.

Appendix E – Evaluation Question(s) – Master Agreement

This portion of the RFP contains special terms and conditions which will govern the resulting agreement, many of which are stated in Section 1.2 of the RFP, with more detail in Appendix D. Please indicate your acceptance for each special term by checking the “Agreed” box and initialing.

Should you take exception to any of these special terms and conditions you are required to note your exception directly below each of the respective terms in question. It should be noted that any exceptions may result in the disqualification of your proposal, lack of providing the required response or indicating terms will be negotiated post award will result in a zero (0) score for the Master Agreement evaluation criteria in Section 2.1.1.

1.1 Terms and Conditions of Agreement

As a result, of this RFP process, it is our expectation that an Agreement will be established between University and one or more of the Contractors. The Agreement will incorporate the relevant terms and conditions of this RFP and Contractor’s proposal (scope of work, pricing, service level agreement, warranty, implementation plan).

Upon award each successful Agreement or will sign a Master Agreement (Appendix D) with the University to sell goods and/or services. The Agreement will incorporate all the terms and conditions, pricing, specifications, and requirements of the RFP.

No representation is made that any quantities will be purchased or that services will be utilized.

Agreed _____
Initial

1.2 Agree to term other than what is specified or automatic renewals for term(s) greater than month-to-month.

Appendix D - 2. Term

The Agreement term and renewals set in the attached Agreement. Exercise of any renewal option will require parties' mutual written agreement.

Agreed _____
Initial

1.3 Agree to termination language other than what is provided in Appendix D, Section 4, 5, and 6.

Appendix D - 4. Termination: The Agreement or a Services Engagement (Rider D) may be terminated by the University in whole, or in part, whenever for any reason the University shall determine that such termination is in the best interest of the University. Any such termination shall be affected by delivery to the Agreement or of a Notice of Termination specifying the extent to which performance of the Agreement is terminated and the date on which such termination becomes effective. The University shall pay all allowable costs incurred up to the effective date of termination. However, the Agreement or shall not be reimbursed for any costs incurred after the effective date of termination.

Agreed _____
Initial

1.4 Appendix D - 5. Obligations Upon Termination: Any materials produced in performance of this agreement are the property of the University and shall be turned over to the University upon request. The University shall pay the Agreement or for all services performed to the effective date of termination subject to offset of sums owed by the Agreement or to the University.

Agreed _____
Initial

1.5 Appendix D - 6. Termination for Lack of Funds, Inability to Deliver, or Closure: The University may cancel or terminate circuit(s) written notice without incurring any penalties or termination fees in case of non-funding, insufficient funding of the federal E-Rate program or MTEAF, inability to deliver desired bandwidth upgrade within a reasonable timeframe agreed to by the Parties, or closure of a facility

Agreed _____
Initial

1.6 Appendix D - 7. Failure to install: If Contractor fails to install the Services at Service Sites pursuant to this Agreement by PROJECTED INSTALLATION DATE, and such failure is not caused by the actions or omissions, negligence or willful misconduct of the University or an End User or due to a Force Majeure Event (as defined in Section 25 below), then Contractor agrees to provide a credit equal to seventy five percent 75% of the MRC for Service under this Agreement for each Service Site not installed by the indicated date. The credit shall be applied to the MRC on the initial invoice for the upgraded Service under this Agreement. Additionally, for each subsequent month after the PROJECTED INSTALLATION DATE, and such failure is not caused by the actions or omissions, negligence or willful that Contractor fails to install the Service at Service Sites, the University shall receive a 75% credit of the MRC on its invoices subsequent to the initial invoice. (By way of example only, if a Service to a Site was scheduled with a in-service date of July 1, 2021 and Contractor fails to install service until October 1, Customer will receive a 75% credit on the MRCs on the first, second, and third monthly invoices for the site).

1.7 Appendix D - 8. Failure to upgrade: In connection with Contractor's installation of the Services, any existing circuits currently being provided by the Contractor to the University pursuant to an

existing agreement between the parties ("Existing Circuits") at a service location/site set forth on Rider A-1 to this Agreement for which Contractor will be upgrading the Services under this Agreement will remain installed and operational until the Services identified in Rider A-1 for such Existing Service Sites have been upgraded by Contractor, with the exception of any cessation of services in connection with the cutover period in connection with the installation of the Services. If Contractor fails to upgrade the Services at such Existing Service Sites pursuant to this Agreement by July 1, 2021, and such failure is not caused by the actions or omissions, negligence or willful misconduct of the University or an End User or due to a Force Majeure Event (as defined in Section 25 below), then the Contractor agrees to continue to provide the Existing Circuits at the Existing Service Sites that were not upgraded by July 1, 2021 at one quarter the contracted rate to the University until the upgrade of the Services at such Existing Service Sites are completed.

1.8 Permit an entity to change unilaterally any term or condition once the Agreement is signed;

Appendix D - 11. Modification:

This Agreement may be modified or amended only in a writing signed by both parties.

Agreed _____
Initial

1.9 Apply the law of a state other than Maine;

Appendix D - 13. Applicable Law:

This Agreement shall be governed and interpreted according to the laws of the State of Maine

Agreed _____
Initial

1.10 Provide any defense, hold harmless or indemnity;

Appendix D - 16. Indemnification

The Contractor shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and orders relating to the services provided under this Contract. Contractor shall indemnify, defend and hold the University, its Trustees, officers, employees, and agents, harmless from and against any and all loss, liability, claims, damages, actions, lawsuits, judgments and costs, including reasonable attorney's fees, that the University may become liable to pay or defend arising from or attributable to any acts or omissions of the Contractor, its agents, employees or subcontractors, in performing its obligations under this Contract, including, without limitation, for violation of proprietary rights, copyrights, or rights of privacy, arising out of a publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under the Contract or based on any libelous or other unlawful matter contained in such data

Agreed _____
Initial

1.11 Waive any statutory or constitutional immunity;

Agreed _____
Initial

1.12 Pay attorneys' fees, costs, expenses or liquidated damages;

Agreed _____
Initial

1.13 Accept any references to terms and conditions, privacy policies or any other websites, documents or conditions referenced outside of the Agreement .

Appendix D - 20. Entire Agreement:

This Agreement sets forth the entire agreement between the parties on the subject matter hereof and replaces and supersedes all prior agreements on the subject, whether oral or written, express or implied. This Agreement is the entire agreement between the University (including University's employees and other End Users) and Agreement or. In the event that Agreement or enters into terms of use agreements or other agreements, policies or understandings, whether on Contractor's purchase order, website, electronic, click-through, verbal or in writing, with University's employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply. University will not be bound to any other terms and conditions set forth in any documents, agreements or policies posted on Contractor's website unless such terms and conditions are set forth in this Agreement. Agreement or may not unilaterally change any term or condition of this Agreement.

Agreed _____
Initial

1.14 Promise confidentiality in a manner contrary to Maine's Freedom of Access Act;

Appendix D - 24. Confidentiality:

The Agreement or shall comply with all laws and regulations relating to confidentiality and privacy including but not limited to any rules or regulations of the University.

Agreed _____
Initial

1.15 Procure types or amounts of insurance beyond those UMS already maintains or waive any rights of subrogation.

Agreed _____
Initial

1.16 Add any entity as an additional insured to UMS policies of insurance.

Agreed _____
Initial