

PROGRAMMER RFQ ADDENDUM 1
December 4, 2017

REQUEST FOR QUALIFICATIONS
Health Science Building Programming Project
UT Chattanooga
SBC No. 540/005-08-2017

This Addendum forms a part of the Request for Qualifications (RFQ) and modifies the original RFQ documents issued November 28, 2017.

Request for Qualifications

Item 1.1 Add Exhibit 1 Terms and Governing this Solicitation to the RFQ

Item 1.2 Add Exhibit 2 Pro Forma Contract to the RFQ

END OF ADDENDUM 1

The University of Tennessee
Exhibit 1 Terms Governing this Solicitation

Programmer for
Health Science Building Programming Project
UT Chattanooga
SBC No. 540/005-08-2017
November 28, 2017

Terms Governing This Solicitation: The terms below govern this solicitation. Respondents may not request revisions to this section. If a Respondent objects to a provision in this Exhibit, Respondent must not bid.

- A. **Governing Law:** The laws of the State of Tennessee, without giving effect to its principles of conflicts of law, govern this solicitation. Any liability of the University is governed by the Tennessee Claims Commission Act. The venue for any claim against the University is the Tennessee Claims Commission.
- B. **Presentations:** The University may invite any Respondent, only certain Respondents, or all Respondents for presentations. Respondent hereby acknowledges that the University has sole and absolute discretion regarding presentation invitations.
- C. **Evaluation Process**
 - a. **Generally:** The University will use the evaluation process to award a contract based on the best value to the University: the best overall combination of technical and pricing.
 - b. **Subjective Nature:** Respondent understands that its response to this solicitation will be evaluated by a scoring committee. Respondent acknowledges that the scoring committee will subjectively evaluate Respondent's technical proposal.
- D. **No Required Quantities or Spend; Non-Exclusive**
 - a. **No Required Quantities or Spend:** Respondent acknowledges that any agreement that results from this solicitation will not obligate the University to purchase any specific amount of goods or services from Respondent, nor will the University be obligated to spend a minimum amount of money with Respondent.
 - b. **Non-Exclusive:** Respondent acknowledges that any agreement that results from this solicitation will not be an exclusive agreement in which the University may procure goods or services only from Respondent. Respondent acknowledges that the University may purchase any goods or services, including the same or substantially similar goods or services, from sources other than Respondent.
- E. **Confidentiality**
 - a. **Introduction:** Tennessee law limits the University's ability to withhold records from disclosure. Respondents must assume that all documentation, including pricing, submitted to the University will be subject to disclosure.
 - b. **Prohibition Against Non-Disclosure Agreements:** The University will not sign non-disclosure agreements related to Respondent's response to this solicitation.
 - c. **Generally:** The University hereby notifies all potential respondents and respondents that placing confidentiality notices on documents submitted to the University does not make the documents confidential under Tennessee law. The

University will ignore such notices. Moreover, the University will not agree to provide advanced notice of disclosure.

- d. Open File Period: After the University issues an intent to award notice, Tennessee law deems all materials submitted by Respondents open for inspection by any Respondent for 7 calendar days.
 - e. Public Records Act: If the University issues a final award, all documents, including the final contract, are subject to disclosure to any Tennessee citizen.
 - f. Routine Disclosures: The University routinely discloses records to the State of Tennessee's agencies (including State Audit), and the Tennessee General Assembly.
 - g. Disclosures: State law does not allow the University to place confidentiality obligations on records that are disclosed under applicable law.
- F. Response Preparation Costs: The University will not pay any costs that a Respondent incurs associated with the preparation, submittal, or presentation of a response. By responding, each Respondent waives any claim against the University for costs the Respondent incurs as a result of responding to this solicitation.
- G. Respondent Review; Waiver of Objections
- a. Required Review: Each potential Respondent must carefully review this solicitation.
 - b. Questions: Any potential Respondent having questions, concerns, or comments regarding this solicitation must notify the University no later than the deadline stated in the timeline of events.
 - c. Waiver of Objections: Any Respondent who fails to submit questions, concerns, or comments before the deadline irrevocably waives their right to object to anything in this solicitation. Accordingly, any such Respondent's protest will be invalid in the event that the protest involves issues to which the Respondent could have objected, but did not.
- H. Amendment; Cancellation; Rebid
- a. University's Right to Amend: The University may amend this solicitation at any time before the response deadline. If the University amends this solicitation, the University will issue a written addendum.
 - b. University's Right to Cancel: The University may cancel this solicitation at any time. The University will have no liability to Respondents in the event of a bid cancellation.
 - c. University's Right to Rebid: In the event that the University cancels a bid, the University may issue a rebid. In the event that the University issues a rebid, the University has no obligation to provide notification to respondents other than through issuance of the rebid.
- I. Unrestricted Right to Reject: The University may reject any response for any reason.
- J. Immaterial Defects: The University may waive minor variances from full compliance with this solicitation. If the University waives immaterial defects in a response, such a waiver does not modify this solicitation's requirements.
- K. Negotiation: The University may negotiate with the top-scoring respondents in the best interest of the University.
- L. Respondent's Right to Withdraw its Response

- a. **Withdrawal:** Respondents may withdraw their response at any time before the deadline for responses. To withdraw a response, a Respondent must submit a written request signed by a representative authorized to legally bind the Respondent. Respondent must send withdrawal requests to the RFQ Coordinator.
 - b. **Resubmit:** Respondents may resubmit a response at any time before the deadline for responses.
- M. **Late Responses:** The University will not accept responses after the deadline listed in the RFQ.
- N. **University's Discretion**
- a. **Generally:** All decisions regarding this solicitation, including the award, are within the University's sole discretion.
 - b. **Examples:** Without limiting the University's unrestricted discretion, the University may:
 - i. Reject any response to this solicitation for any reason.
 - ii. Seek new proposals at any time before the response deadline
 - iii. Seek clarification of additional information from any individual Respondent.
 - iv. Modify the selection criteria.
 - v. Modify the time schedule.
 - vi. Conduct negotiations:
 - 1. The University may negotiate with qualified Respondents.
 - 2. The University may negotiate with only a single Respondent.
 - 3. The University may elect to conduct multiple negotiation rounds, and the University may structure the negotiations in the University's sole discretion.
 - 4. If the University determines costs and contract finalization discussion and negotiations are not productive, the University reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.
- O. **Dispute Resolution:** In the event that a Respondent disputes anything related to this solicitation, the Respondent must first follow the University's protest procedures (<https://universitytennessee.policytech.com/dotNet/documents/?docid=203>). If the Respondent is not satisfied with the University's resolution of the Respondent's protest, and if requested by the University's Chief Financial Officer, the Respondent shall enter into mediation with the University before the Respondent pursues any formal legal action. The parties shall make reasonable efforts to resolve any dispute before filing any formal legal action.
- P. **Waiver of Claims:**
- a. **Irrevocable Waiver:** By responding to this solicitation, Respondent hereby irrevocably waives any claims against the University's trustees, officers, and employees, or former employees. Respondent hereby covenants not to sue

University employees in their individual capacity. This release and waiver applies to Respondent and Respondent's successors, heirs, and assigns.

- b. Materiality: The University and Respondent state that this clause is material to this solicitation.

Q. University Policies

- a. Non Solicitation: Respondents shall comply with the University's "Vending and Solicitations on the University campus" policy: http://policy.tennessee.edu/fiscal_policy/fi0325/
- b. Gift Acceptance: Respondents shall comply with the University's "Employee Gift Acceptance Policy:" http://policy.tennessee.edu/fiscal_policy/fi0717/

R. Severability: The University and Respondent intend as follows:

- a. That if any provision of this solicitation is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- b. That if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of the solicitation will remain in effect as written; and
- c. That any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

S. Compliance with Law: Respondent shall comply with applicable law.

End of Exhibit 1

The University of Tennessee
Exhibit 2 Pro Forma Contract

The University of Tennessee
Contract

This contract documents the agreement between The University of Tennessee (hereinafter University), _____ (hereinafter Consultant).

This contract consists of this cover page, the University's Standard Terms and Conditions, the requested scope of services described in the Request for Qualifications dated November 28, 2017 for the Health Science Building Programming Project (SBC No. 540/005-08-2017) at the UT Chattanooga campus, Chattanooga, Tennessee and the Consultant's proposal dated _____. Terms contained on this cover page and the University's Standard Terms and Conditions shall prevail over those of any attachment unless otherwise stated under "Other terms" below.

The period for performance under this contract is from _____ through _____

The University will compensate the Consultant a maximum hourly not to exceed fee in the amount of \$_____ invoiced and compensated as described herein up to the maximum amount unless additional services is requested. Payment shall be made after receipt of the Contractor's statement of services is performed. The final payment shall be made only after Consultant has completely performed the required services. The compensation shall be based on rates stated herein for services and reimbursement for expenses.

The University agrees to reimburse Consultant for printing costs and customary travel expenses incurred in connection with this Contract according to University policy. Reimbursement shall be made only after Consultant has completed and submitted an expense statement accompanied by receipts.

In witness of their acceptance of the terms of this agreement, the parties have had this Contract executed by their duly authorized representatives.

Consultant:

_____ Signature	_____ Name	_____ Date
_____ Title	_____ Telephone Number	_____ Federal Tax ID Number

The University:

_____ Michelle L. Crowder Interim Executive Director of Capital Projects	_____ Date
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Approved as to Form and Legality:

_____ C. Ryan Stinnett Associate General Counsel	_____ Date
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The State:

_____ Ann McGauran State Architect	_____ Date
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_____ Health Science Building SBC No. 540/005-08-2017	_____ Responsible Account
Project Name	

STANDARD TERMS AND CONDITIONS

1. The University is not bound by this Contract until it is approved by the appropriate University official(s) indicated on the signature page of this Contract.
2. This Contract may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Contract.
3. This University may terminate this Contract by giving the Consultant at least thirty (30) days written notice before the effective termination date. The Consultant shall be entitled to receive equitable compensation for satisfactory authorized work completed as of the termination date.
4. If the Consultant fails to perform properly its obligations under this Contract or violates any term of this Contract, the University shall have the right to terminate this Contract immediately and withhold payments in excess of fair compensation for completed services. The Consultant shall not be relieved of liability to the University for damages sustained by breach of this Contract by the Consultant.
5. The Consultant shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University.
6. Unless otherwise indicated on the reverse, if this Contract provides for reimbursement for travel, meals or lodging such reimbursement must be made in accordance with University travel policies.
7. The Consultant warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or subconsultant to Consultant in connection with any work contemplated or performed relative to this Contract, and that no employee or official of the State of Tennessee holds a controlling interest in the Consultant. If the Consultant is an individual, the Consultant certifies that he/she is not presently employed by the University or any other agency or institution of the State of Tennessee; that he/she has not retired from or terminated such employment within the past six months; and that he/she will not be so employed during the term of this contract.
8. The Consultant shall maintain documentation for all charges against the University under this Contract. The books, records and documents of the Consultant, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the University or the Comptroller of the Treasury, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.
9. No person on the grounds of disability, age, race, color, religion, sex, national origin, veteran status or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this

Contract. The Consultant shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of non-discrimination.

10. The Consultant shall maintain insurance coverage with the limits set forth below. Consultant's certificates of insurance, in a form acceptable to Owner, shall be provided to the Owner before the date of this Agreement and thereafter upon written request.

Commercial General Liability	Each Occurrence	\$ 1,000,000
	Aggregate	\$ 1,000,000
Commercial Automobile Liability		
Any Auto – Each Accident, Combined Single Limit		\$ 1,000,000
Workers' Compensation as required by statute, including employers' liability with limits of:		
	Each Accident	\$ 100,000
	Disease, each employee	\$ 100,000
	Disease, policy limits	\$ 500,000
Professional Liability Insurance		
	Each Claim	\$ 1,000,000
	Annual Aggregate	\$ 1,000,000

11. The University shall have no liability except as specifically provided in this Contract.
12. The Consultant shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
13. This Contract shall be governed by the laws of the State of Tennessee, which provide that the University has liability coverage solely under terms and limits of the Tennessee Claims Commission Act.
14. The Consultant shall avoid at all times any conflict of interests between his/her duties and responsibilities as a Consultant and his/her interests outside the scope of any current or future Contracts. The following principles define the general parameters of a conflict of interests prohibited by the University:
 - a. Consultant's outside interests shall not interfere with or compromise his/her judgment and objectivity with respect to his/her duties and responsibilities to the University.
 - b. A Consultant shall not make or influence University decisions or use University resources in a manner that results in: Financial gain outside any current or future Contracts for either the Consultant or his/her relatives or Unfair advantage to or favored treatment for a third party outside the University.
 - c. A Consultant's outside financial interests shall not affect the design, conduct, or reporting of research.
 - d. The Consultant certifies that he/she has no conflicts of interests and has disclosed in writing the following:

- a) Any partners or employees of the Contractor who are also employees of the University.
 - b) Any relatives of the Consultant's partners or employees who work for the University.
 - c) Any outside interest that may interfere with or compromise his/her judgment and objectivity with respect to his/her responsibilities to the University.
15. For personal, professional, and contract services, the Consultant shall submit brief, periodic progress reports to the University as requested.
16. Prohibition of Illegal Immigrants: The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Consultant hereby attests, certifies, warrants, and assures that the Consultant shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subconsultant who will utilize the services of an illegal immigrant in the performance of this Contract. The Consultant shall reaffirm this attestation, in writing, by submitting to the University a completed and signed attestation document, hereto, no less than semi-annually during the period of this Contract. Such attestations shall be maintained by the consultant and made available to state officials upon request.
 - b. Prior to the use of any subconsultant in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Consultant shall obtain and retain a current, written attestation that the subconsultant shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subconsultant who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subconsultants shall be maintained by the consultant and made available to state officials upon request.
 - c. The Consultant shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Consultant understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a consultant from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a consultant is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a

person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

17. Upon completion of the Contract, the documents provided by Consultant to University as instruments of professional services shall be the property of The University of Tennessee, and may be used again by Consultant only for the benefit of the University. Originals of these documents may remain in the files of Consultant. Consultant and Consultant's subconsultants may reuse any portion of the work prepared for this Project for other projects. Except as set forth in the Contract or any subsequent agreements between Consultant and University, Consultant shall have no liability for any future use by University of the instruments of professional service provided by Consultant under the Contract where Consultant is not engaged to provide services for such future use.
18. This Contract is the entire agreement between the University (including University employees and other end users) and Consultant. In the event Consultant enters into terms of use, end user agreements, or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with University employees or other end users, such agreements shall be null, void, and without effect, and the terms of this Contract shall apply.
19. In compliance with the requirements of Tenn. Code Ann. § 12-4-120, the Consultant hereby attests that the Consultant has registered with the State of Tennessee's Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
20. The Consultant will not be eligible to provide design services to the University for the Health Science Building Project; however the Consultant would be eligible to provide consulting services to any Designer who provides the design services to the University for its Health Science Building Project.
21. Iran Divestment Act. The Consultant certifies, under penalty of perjury, that to the best of its knowledge and belief the Consultant is not on the list created pursuant to Tenn. Code Ann. § 12-12-106. The Consultant further certifies that it shall not utilize any subconsultant that is on the list created pursuant to Tenn. Code Ann. § 12-12-106.
22. Additional services shall be negotiated as a not to exceed amount billed at an hourly rate as set forth in the Contract. Compensation for these additional services shall not be payable to the consultant unless prior to the time such additional services are rendered. The University shall have approved by written agreement the payment and scope of work to the Consultant prior to the Consultant commencing with any additional work.

End of Exhibit 2