



# MIDWESTERN HIGHER EDUCATION COMPACT

## Virtualization & Data Center Modernization

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Request for Proposal (RFP)

MHEC-RFP-03092020

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DISCLAIMER NOTICE: This Request for Proposal (RFP) does not obligate the Midwestern Higher Education Compact (MHEC) or its member states to award a contract. MHEC reserves the right to cancel this RFP if it is considered to be in its best interest. Proposals must be clear and concise. Proposals that are difficult to follow or that do not conform to the proposal requirements or binding specifications may be rejected. MHEC reserves the right to change the evaluation criteria or any other provision in this RFP by posting notice of the changes on MHEC's public website at <http://www.mhec.org/news>. For this RFP, posting on the captioned website above constitutes written notification to each offeror. Offerors should check the site daily and are expected to review information on the site carefully before submitting a final proposal.

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## OVERVIEW

The Midwestern Higher Education Compact (MHEC) is seeking innovative and cost-effective virtualization solutions to assist education institutions to transition their infrastructures to the modern data center where workloads may reside on-premise or across varied public and private cloud providers on a secure network. Currently, MHEC maintains a full catalog of VMware's products and services through a contract with Arrow Electronics (MHEC-021213). The contract meets the public sector acquisition requirements of a competitive sourcing event by following the model procurement code for state and local governments. The contract with Arrow Electronics includes a negotiated VMware end user license agreement and volume purchase pricing with tiered product and service discounts. Contract fulfillment is through Arrow Electronics network of authorized VMware resellers and is available nationally to the entire state, local, and education marketplace. As part of the contract lifecycle ending in November 2020, MHEC is competitively soliciting proposals with one or more qualified provider(s) for Virtualization & Data Center Modernization. The intent of the solicitation will be to enter a master agreement with a framework to allow providers to write orders and institutions to acquire products and services through a defined fulfillment channel, a negotiated enterprise license agreement, and a starting point for price.

## THE MIDWESTERN HIGHER EDUCATION COMPACT

The Midwestern Higher Education Compact (MHEC) is one of four regional education interstate compacts in the United States, with each having its own niche for addressing issues and advocating for postsecondary education. A compact is a statutorily created contract amongst the states to work collaboratively together on issues of common concern and interest. The MHEC legislation that was passed in each state makes the governing body of the Compact (Commission) an instrumentality of state government in each member state. Similarly, the other regional education Compacts have been statutorily-created and include the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE). There are three states not covered by any of the compacts: New Jersey, New York, and Pennsylvania. MHEC was established in 1991, the last of the four compacts to be formed. Collectively MHEC works with member states to create solutions that build higher education's capacity to better serve individuals, institutions, and states by leveraging the region's resources, expertise, ideas, and experiences through multi-state: convening, research, programs, and contracts. Twelve Midwestern states have enacted legislation to become members of MHEC: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Utilizing the expertise of representative groups of stakeholders from the higher education community, MHEC conducts competitive sourcing processes that leverages the potential purchasing power of the 12 MHEC member states. One of the Compact's top priorities is to establish public-private relationships that allows more flexibility while still maintaining compliance with applicable procurement statutes. MHEC has adopted a policy that requires MHEC contracts to be awarded based on competitive-bid requirements that are consistent with statutory procurement rules of the Compact member states. The primary constituents served by MHEC are the approximately 1,000 public and private not-for-profit higher education institutions in the member states whose combined enrollments total over four million students. In addition, where appropriate, MHEC solutions can be extended nationally throughout all

Compact regions including state, local and education entities. MHEC technology contract sales have exceeded \$3.5 billion dollars with over \$350 million dollars realized in savings nationally since 2010.

MHEC is governed by a 60-member commission of legislators, higher education leaders and governors' representatives. Two commissioners are appointed by each state's legislature and each state's governor appoints three. Member state appropriations, foundation grants and program fees finance MHEC's activities. The commission maintains a headquarters office and staff in Minneapolis, Minnesota. MHEC's website <http://www.mhec.org> provides a complete overview of the organization's goals, philosophies, and financials.

## **SECTION A – PROPOSAL REQUIREMENTS**

### **A.1 THE REQUEST FOR PROPOSAL (RFP)**

The purpose of this Virtualization & Data Center Modernization RFP is to minimize the burden on administrative resources for institutions in the 12 MHEC Compact member states, saving both time and money, while expediting technology acquisitions. MHEC's goal is to award competitive solicitations that integrate with the institutions' procurement process resulting in a negotiated Master Agreement terms and conditions, licensing, and pricing. Additionally, it allows an institution to focus most of its energy on finding the technology solution that best fits its needs instead of the contract itself. The end result is a Master Agreement that facilitates a direct relationship between the technology provider(s) and institutions which contains discount pricing as well as terms and conditions that are better than most higher education institutions can negotiate individually; with additional discounts often available for special or large order purchases. Responses must be keyed to the section and paragraph numbers provided in this RFP.

### **A.2 CONTACTING MHEC**

For further information about the Midwestern Higher Education Compact and its solutions you are referred to the Compact website at: <http://www.mhec.org> or contact:

Mr. Nathan Sorensen,  
Director of Government Contracts  
Midwestern Higher Education Compact  
105 Fifth Avenue South, Suite 450,  
Minneapolis, MN 55401  
Phone: (612) 677-2767  
E-mail: [nathans@mhec.org](mailto:nathans@mhec.org)

### **A.3 PUBLIC NOTICE**

This RFP and any related amendment and notices will be posted on <http://www.mhec.org/news> website. Offeror's are responsible for checking this website to obtain all information and documents related to this RFP. In the event MHEC finds it necessary to change any of the dates or events related to this solicitation, it will do so by issuing a written statement or an amendment to the RFP and publicly posted the notice <http://mhec.org/news>.

#### **A.4 CONFIDENTIALITY**

After an award is made and the Master Agreement(s) are executed, all proposals and documents pertaining to the proposals will be open to the public. If the prospective Offeror submits information in response to this RFP that it believes to be trade secret materials as defined by the laws of MHEC member states, the prospective Offeror must:

- Clearly mark all trade secret materials in its response at the time the response is submitted;
- Include a statement with its response justifying with specificity the trade secret designation for each item; and
- Defend any action seeking release of the materials it believes to be a trade secret, and indemnify and hold harmless MHEC, its Commissioners, agents and employees, from any judgements awarded against MHEC in favor of the party requesting the materials, and any and all costs connected with the defense. This indemnification survives MHEC's award of a contract. In submitting a response to this RFP, the prospective Offeror agrees that this indemnification survives as long as the trade secret materials are in possession of MHEC.

In the event a request is made for information which the prospective Offeror has identified as trade secret, MHEC agrees to notify Offeror of said request and provide its determination as to whether disclosure is legally required, in addition to anticipated dates, if any, and to allow the Offeror an opportunity, in its discretion and at its sole expense, to seek a protective order or otherwise protect the confidentiality of the information.

#### **A.5 CONFLICT OF INTEREST**

If any such actual or potential conflict of interest arises during this solicitation, offeror shall immediately disclose and notify MHEC. In submitting a response to the RFP, the Offeror represents and certifies that no relationship exists between the Offeror and MHEC or the members of its committees that interferes with fair competition or is a conflict of interest, and that no relationship exists between the Offeror, and other persons or firms that constitutes a conflict of interest that is adverse to the MHEC.

#### **A.6 COLLUSION**

Offerors must prepare proposals independently, without collusion. By submitting a proposal, the Offeror represents and certifies that unless otherwise required by law, the offer proposed by Offeror has not been and will not be knowingly disclosed by the Offeror prior to opening directly or indirectly to any other vendor, and no attempt has been made or will be made by the Offeror to induce another person or firm to submit a proposal for the purpose of restricting competition.

#### **A.7 PROPOSAL TIMELINE**

The following section describes the proposal timeline of events related to this multi-stage Request For Proposal (RFP). Due dates are as indicated unless otherwise changed by MHEC. In the event MHEC finds it necessary to change any of the dates or events listed in this table, it will do so by issuing a written statement or an amendment to the RFP and publicly post the notice at <http://www.mhec.org/news>.

Event	Date
Formal Issuance of RFP	Monday, March 9, 2020
Pre-Proposal Questions Due	Friday, March 20, 2020, 10:00 A.M. CDT
Publish Answers to Pre-Proposal Questions	Tuesday, March 31, 2020
Proposals Due	Tuesday, April 7, 2020, 10:00 A.M. CDT
Notification of Finalist	Tuesday, April 14, 2020
Respondent's Conference (Big Ten Headquarters, Chicago O'Hare Airport)	Wednesday, April 29, 2020; Thursday, April 30, 2020; or Friday, May 1, 2020
Best and Final Offer (BAFO)	May 2020
Contract Award	May 2020
Execution of Agreement	June 2020

#### **A.8 PRE-PROPOSAL QUESTIONS**

Questions and requests for clarification regarding the RFP will be conducted by e-mail. If the Offeror discovers a significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the Offeror should immediately notify Mr. Nathan Sorensen [nathans@mhec.org](mailto:nathans@mhec.org) of such error and request modification or clarification of the RFP document. Only information supplied by MHEC in writing through Mr. Nathan Sorensen or this RFP or amended RFP should be used as a basis for the preparation of Offerors response. Pre-proposal questions are to be submitted by email to [nathans@mhec.org](mailto:nathans@mhec.org) no later than Friday, March 20, 2020, 10:00 A.M. CDT. Answers will be provided to all respondents who submitted questions via email and will be posted online at <http://www.mhec.org/news> on Tuesday, March 31, 2020. All notification of changes will be posted at <http://www.mhec.org/news>.

#### **A.9 OFFEROR RESPONSIBLE FOR COST**

Offeror is responsible for all costs associated with the preparation, submittal, presentation, and evaluation of any proposal. MHEC will incur no obligation of liability whatsoever to anyone resulting from issuance of, or activities pertaining to this RFP.

#### **A.10 SUBMISSION REQUIREMENTS AND PROPOSAL DEADLINE**

The deadline for submission of proposals and related information is Tuesday, April 7, 2020, 10:00 A.M. (CDT). Three (3) sealed bound original and one (1) identical electronic copy (acceptable media CD, DVD, flash drive) of the response. Allowable formats are PDF and Microsoft Office. Spreadsheet data such as product and service price lists may be submitted in Microsoft Office Excel format. Proposals delivered late will be rejected.

Virtualization & Data Center Modernization MHEC-RFP-03092020  
c/o Mr. Nathan Sorensen  
Midwestern Higher Education Compact

105 Fifth Avenue South, Suite 450,  
Minneapolis, MN 55401

### **A.11 PROPOSAL FORMAT**

Proposals must be clear and concise. Proposals that are difficult to follow or that do not conform to the RFP format or binding specifications may be deemed non-responsive and will not be further considered. Each proposal must be complete and contain a description of the Offerors qualifications in accordance with this RFP's requirements. Include a cover letter on company letterhead containing a brief introduction of the provider, corporate structure, major business lines, a primary contact and submission date. The letter shall be concise and need not repeat any of the detailed information set forth in the proposal; however, any requirements, terms or conditions of this RFP to which the Offeror objects and/or does not accept shall be clearly stated in either: the cover letter along with any alternatives or further explanation; inserted at the appropriate place in the proposal; or be attached at the end of the proposal and designated as additional material.

### **A.12 EVALUATION CRITERIA**

The selection committee will analyze and evaluate all responses to this RFP. The analysis will be based upon the criteria set forth in this RFP. The following criteria and their identified weight will be used to evaluate the responses:

Factor	Weight
1. Proposal Requirements	Pass/Fail
2. Solution Proposal	30%
3. MHEC Requirements	30%
4. Pricing	20%
5. Innovation	20%

### **A.13 REQUESTS FOR CLARIFICATION**

After the initial evaluation of proposals and determination of Offeror's qualification, capabilities and proposed solution, the selection committee may request clarification of an Offeror's response.

### **A.14 RESPONDENTS (FINALISTS) CONFERENCE**

The selection committee will select and notify the finalists on or about April 14, 2020. Only finalists will be invited to participate in the subsequent steps of the solicitation. Prospective finalists will be asked to make a face-to-face presentation to the selection committee in Chicago, IL during the period of approximately April 29 – May 1, 2020 at the BIG Ten Conference Center 5440 Park Place, Rosemont, IL 60018. The Offeror will be responsible for all costs, including any travel and per diem expenses.

### **A.15 BEST AND FINAL OFFER (BAFO)**

Cost or price analysis will be conducted as part of the initial evaluation of the proposals. The selection committee may request best and final offers (BAFO) and may restrict the number of Offerors invited to submit a BAFO or may offer the option to all Offeror's. The selection committee may request that Offeror(s) readdress the cost or price, or important aspects of the proposal, or clarification from statements made at the Respondents Conference.

### **A.16 CONTRACT AWARD**

Award(s) may be granted to the highest scoring responsive and responsible Offeror(s). Upon completion of the evaluation process, the selection committee will recommend one or more prospective Offeror(s) to MHEC's Commission, and the Compact will enter discussions to establish a Master Agreement with the recommended provider(s). Once a Master Agreement(s) is successfully consummated, the Compact will so notify all Offerors who responded to the RFP. The selection committee reserves the right to not recommend any prospective providers, and the Compact reserves the right not to enter into an agreement with a recommended provider at its own discretion.

### **A.17 EXECUTION OF AGREEMENT**

MHEC may enter into negotiations with one or more Offeror(s) whose proposals received the highest scores and meets all of the requirements for an award. During negotiations, the MHEC and Offeror(s) may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would not have an effect on the ranking of proposals. MHEC may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other Offerors for award, if the Offeror fails to provide necessary information for negotiation in a timely manner, fails to negotiate in good faith, or is unable to successfully negotiate contract terms that are acceptable to MHEC member states. Contract negotiations will be conducted primarily by e-mail, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held at MHEC headquarters in Minneapolis, MN. The Offeror will be responsible for all costs, including any travel and per diem expenses.

### **A.18 SIGNATORY AUTHORITY**

The proposal must be signed by an authorized signatory of the Offeror's firm responsible for the decision to offer the proposal; or if not the person in the Offeror's firm responsible for the decision to offer, a person that has been authorized in writing to act as agent to quote for the persons responsible for such decisions.

## **SECTION B: SOLUTION PROPOSAL**

### **B.1 SCOPE OF SOLICITATION**

The traditional uses of virtualization applications, including hardware, networking, server, and storage, has seen a metamorphosis of the software solutions which now applies workloads across the whole enterprise, where information technology infrastructure is virtualized and delivered as a service. The software defined data center modernization is occurring not only at large public multi-campus state university systems with significant research programs and highly complex IT infrastructures, but also at

small private and local community colleges. Data center modernization requires institutions to rethink operational and organizational priorities, resulting from changing economic trends and new technologies. Virtualization software solutions play a variety of roles in the data center modernization by seeking innovative and cost-effective solutions to assist institutions in their transition to an agile operation delivering anytime, anywhere, any device solutions through a secure data center and network. Data center modernization and consolidation projects offer the opportunity for achieving both operational efficiencies and savings in server, storage, and network infrastructures. MHEC is seeking a contract with one or more technology providers with interoperable capabilities of these combined application workloads using a mixed approach that allows various levels of products and services at defined price points. In addition to the applicable products, hardware, software, IT as a Service (ITaaS), managed services, service solutions, financing, or other related services; any proposed solution needs to have as options: implementation costs, consulting fees, maintenance, technical support, security, and training to the extent necessary to allow the eligible organization(s) to fully utilize the procured solution.

## **B.2 PROPOSED SOLUTION**

The Midwestern Higher Education Compact is seeking innovative and cost-effective solutions to assist institutions in our MHEC's Member States transitioning to the modern data center, where workloads may reside on-premise or across varied public and private cloud providers.

Solutions should include moving on-premise workloads from legacy hardware to modern enterprise hardware, converged infrastructure, hyperconverged, and cloud infrastructure solutions. Respondents should describe how their proposed solution is able to leverage existing infrastructure components and services in a solution and how their solution may reduce management interfaces. Proposed solutions should:

- Describe the ability to move workloads between on-premise solutions and cloud providers as it relates to high availability and disaster recovery scenarios.
- Describe options for self-service and on-demand provisioning and de-provisioning of workloads and address costing and chargeback reporting features related to server and application workloads.
- Describe how they incorporate multiple storage tiers, both on-premise and cloud based, into their solution as well as options for data encryption and backup.
- Describe networking capabilities for micro-segmentation within public and private cloud infrastructures. Proposals should also address support for SD-WAN and virtual private channel capabilities between on-premise and hosted cloud infrastructures, as well as support for load balancing and firewall functions within the proposed solution.
- Describe management capabilities of proposed products and solutions, including any limitations to managing diverse and hybrid workloads within a centralized management console.
- Describe how security is accounted for at the workload level, network level, storage level and at a management level.

Workloads to be addressed in your proposal should include traditional server-based workloads, such as web servers, application servers, and database services on currently supported Microsoft Windows Server Operating Systems and Linux OS distributions. Container based workloads, such as Docker and

Kubernetes application containers, should also be addressed in this proposal. Additionally, proposed solutions should address Virtual Desktop Infrastructure workloads, including application streaming.

### **B.3 GENERAL CRITERIA**

MHEC is seeking proposals from Offeror's who are willing to work with MHEC to provide eligible organizations creative solutions that will be effective within the confines of the purchasing regulations to which eligible organizations are bound. General criteria upon which the Section B: Solution Proposal will be evaluated, but not limited to, for the solution will:

- Be designed as a renewable multiple-year offering with the capability of serving the entire MHEC region and optional NEBHE, SREB, and WICHE regions;
- Offer eligible organizations a streamlined and simplified procurement process for a solution that meets Virtualization & Data Center Modernization;
- Make available a comprehensive Virtualization & Data Center Modernization solution that is flexible enough to adapt to the specific needs and circumstances of each eligible organization;
- Help avoid repeat RFPs from eligible organizations, since the solutions offered are expected to clearly provide the best value in the region;
- Assist eligible organizations in the conversion, installation, training and support of the respondents' products as necessary; and
- Be structured to enable institutions, consortia of institutions, and systems in Compact member states to participate as they deem appropriate and in their own best interests.

Depending upon the responses received and the solutions presented, the selection committee may select more than one technology solutions provider to work with in developing and implementing a Virtualization & Data Center Modernization offering.

### **B.4 ELIGIBLE ORGANIZATIONS**

At a minimum the Offerors proposed solution shall be available for all public and private non-profit colleges, universities, community colleges, technical colleges and higher education agencies in the twelve (12) Midwestern state region of MHEC.

Optionally, solution offerings may be proposed to any or all of the following public entities:

- K-12 schools and districts, including public libraries;
- cities, counties, and local subdivisions;
- state agencies; and
- faculty, staff, and students for any or all of the above entities

Contract benefits may differ for each of these optional public entities.

MHEC may also entertain proposals to expand proposed offering to states within the other three regional education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE); subject to each respective Compacts' approval.

- **MHEC** member states are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
- **NEBHE** member states are Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

- **SREB** member states are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
- **WICHE** member states are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, U.S. Pacific Territories, and Freely Associated States.

## **B.5 ACCESSIBILITY**

Offeror agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by provider shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Organization resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>). Provide documentation that describes the level of compliance with Section 508 Standards and for web-based technology with Web Content Accessibility Guidelines ("WCAG") 2.0 AA.

## **B.6 PRODUCT AND SERVICES OFFERING**

Offeror shall propose a catalog of products, hardware, software, IT as a Service (ITaaS), managed services, service solutions, financing, or other related services. Any proposed solution needs to have as options: implementation costs, consulting fees, maintenance, technical support, security, and training to the extent necessary to allow the Eligible Organization(s) to fully utilize the procured solution. It shall be the Offeror's responsibility to make certain that all hardware, software, IT as a Service (ITaaS), managed services, service solutions, support, financing, or other related services is included in their proposal to guarantee a fully functional solution. It shall be the Offeror's responsibility to verify that any solution proposed will work as specified in the Eligible Organization's environment.

- Describe pre-sales support services available for architecting and engineering solutions for Eligible Organizations that are included as a part of the service offering; elaborate on any fee-based services for large or complex implementations where Eligible Organizations may want to contract for additional support.
- Describe post-sales support services available for project implementations and/or ongoing support that are included as a part of the service offering; elaborate on any fee-based services where institutions may want to contract for additional support.
- Describe training and certification pathways available to Eligible Organizations and associated costs.
- If awarded, describe your go to market strategy to promote the offering and provide a short marketing statement.

## **B.7 LICENSING**

Any software End User License Agreement (EULA) or Enterprise License Agreement (ELA) where Eligible Organization is the end user will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of

the EULA or ELA, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides. Offeror shall provide applicable software licensing terms and conditions for each licensed product. Offeror must agree to amend or modify software licensing agreement to meet statutory requirements. The software license will be a binding legal document to the Master Agreement.

## **B.8 PRICING**

Offeror must thoroughly explain their pricing structure in their response. Price quoted shall be discount from manufacturer education and/or commercial list price by category including transportation and delivery charges fully prepaid by the Offeror, F.O.B. destination. No additional charges will be allowed for packing, handling, fuel surcharge, or partial delivery costs. Offeror must be an accredited OEM partner, if not the manufacturer. Include a Microsoft Excel document with the most current product catalog with the manufacturer education and/or commercial list price. Include any products, hardware, software, IT as a Service (ITaaS), managed services, service solutions, or other related services. Any proposed solution needs to have as options: implementation costs, consulting fees, maintenance, technical support, security, and training to the extent necessary to allow the eligible organization(s) to fully utilize the purchased solution. The percentage discount for the items shall remain firm for the duration of the contract period. MHEC reserves the right to negotiate this and other pertinent terms with the selected finalist(s).

## **B.9 VOLUME TIER DISCOUNTS**

A volume tier discount structure should be included for larger orders presenting an opportunity for improved pricing. Volume discounts should be tiered and maximized by dollar amount or unit. Volume discounts must be clearly identified in the proposal.

## **B.10 INCENTIVE AND REBATES**

To support Eligible Organizations and to encourage use of the MHEC contract, Offerors are encouraged to propose Eligible Organizations rebates or offer additional programs or incentives that will benefit Eligible Organizations. These rebates or incentives programs are in addition to the Contract Administration Fee (CAF) see section C.25. Any and all rebates and incentive programs shall have no effect on the reporting and payment to MHEC of the Contract Administration Fee. Please describe your Eligible Organization rebate incentive and/or customer loyalty programs, if applicable.

## **B.11 ORDER**

Offeror must thoroughly explain their quote process and fulfillment process in their response. Offeror must be an accredited OEM partner, if not the manufacturer. All order fulfillments will be made directly from provider or indirectly from an OEM authorized distributor or reseller. Offeror will fulfill all OEM maintenance and support contracts directly through/by OEM or authorized OEM support partner. The Offeror shall supply quotes upon request. Each quote shall include the list price, discount percentage, discounted unit price and extended price per item. Quote must clearly indicate the method of delivery, whether via media, download, or some other means. Orders may be placed either by fax, email, or Internet (if available and not to the exclusion of other methods). All Orders must reference the assigned MHEC contract number and the Eligible Organizations purchase order must be referenced on the invoice. Invoices shall have detailed information sufficient to process for a payment.

## **B.12 DOCUMENTATION**

Offeror shall provide user manuals and related materials and/or give access to on-line documentation sufficient to allow full utilization of the products, services, and licensed software in accordance with the specifications. Documentation will include (but is not limited to) overview descriptions of all major functions and detailed step-by-step operating procedures for use of product, services, and licensed software. The documentation to be provided by Offeror is in addition to any on-line help which is part of the products, services, or licensed software user interface.

## **B.13 INSURANCE**

Offeror shall maintain appropriate levels of insurance as required by the Eligible Organization and certificates of insurances shall be delivered to Eligible Organizations prior to commencement of the work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded Offeror shall give the participating entity a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The awarded Offeror shall require all subcontractors performing any work to maintain coverage as specified.

## **B.14 SUBCONTRACTORS**

Offeror may offer the use of subcontractors in their response to the RFP. However, MHEC will consider the Offeror to be the sole point of contact with regard to contractual matters. Any use of subcontractors will not release the successful Offeror from its obligations under the Master Agreement, and the successful Offeror will be required to indemnify, save and hold harmless MHEC and the Eligible Organization from any and all acts or omissions of said Subcontractors while performing services pursuant to any agreement resulting from this RFP.

## **B.15 SMALL BUSINESS MINORITIES, WOMEN AND ECONOMIC DISADVANTAGE**

Many Compact member states have business development plans for small/disadvantaged businesses and spending goals to include businesses owned and controlled by minorities, women and economic disadvantaged. If Subcontractors are utilized for fulfillment of an order, MHEC encourages the consideration of minorities, women, and economic disadvantaged small businesses. Offerors or Subcontractors that qualify as small/disadvantaged businesses may be required to provide all certifications and/or reports of such upon request by Eligible Organization

## **B.16 GREEN INITIATIVES**

MHEC wants to make sure to minimize our impact on the Earth's climate. Where possible, we would like to implement innovative and responsible environmental practices throughout the Compact to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.

## **B.17 REFERENCES**

Offeror shall provide a list of three (3) current higher education accounts. Information must include university name, primary contact name, title, address, telephone number, email address, campus agreement full-time equivalent student count, annual spend, and the original start date of the agreement for each reference. List other related references if higher education references are not

available. The Offeror shall indicate how long the Offeror has had a contractual relationship with the client and the types of products and services provided to the client. Incorrect information provided will be evaluated negatively. MHEC reserves the right to contact references.

## **SECTION C: MHEC REQUIREMENTS**

### **C.1 MASTER AGREEMENT TERMS**

The purpose of this Virtualization & Data Center Modernization RFP is to minimize the burden on the administrative resources of Eligible Organizations, saving both time and money, while expediting technology acquisitions. Successful responses to Section B: Solution Proposal will address product and service offerings, licensing, pricing, incentives, and fulfillment to Eligible Organizations. A successful Offeror will enter into contract negotiations with MHEC, with the resulting master agreement between MHEC and the Offeror creating a means for Eligible Organizations to enter into a direct relationship with the Offeror for the acquisition of the proposed technology solution. Section C: MHEC Requirements helps establish this direct relationship between the technology solution provider and the Eligible Organizations by meeting public sector acquisition requirements of a competitive sourcing event following the model procurement code for state and local governments. The end result is a competitively sourced and negotiated Master Agreement between MHEC and technology solution provider with terms and conditions, licensing, and pricing suitable for Eligible Organizations' to use through simple placement of an order or through the making of a limited number of amendments.

The inability of an Offeror to accept these mandatory requirements of Section C does not automatically remove that Offeror from consideration; however, failure to accept any of the requirements may affect the overall rating of the Offerors proposal. For those terms Offeror fails to accept, please state with clarity the reasons for objection. MHEC and Offeror may agree to alter or otherwise change the terms and conditions in the resulting Master Agreement. MHEC reserves the right to terminate negotiations or reject a proposal as nonresponsive. Responses must be keyed to the section and paragraph numbers provided.

### **C.2 CONTRACT TERM**

The MHEC Master Agreement shall be effective on the date that the parties to the Master Agreement sign the Agreement. It shall remain in effect for an initial three (3) year term from the effective date and renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the anniversary of the effective date. Eligible Organizations may procure products and services from the technology solution provider under the terms of the MHEC Master Agreement at any time during the duration of the Agreement.

### **C.3 TERMINATION**

Any resultant Master Agreement may be canceled by either the selected Offeror or MHEC at any time without cause during its term upon ninety (90) days written notice to the other party. The inability of the Offeror to provide sufficient products or services at the expected service level and/or to perform services on a timely basis may serve as grounds for and order or contract termination. Poor performance as demonstrated by slow response time, failure to adhere to safety practices and

regulations, failure to pursue the work with diligence, poor productivity, inefficient work, and poor workmanship may, without limitation, constitute grounds for immediate termination of an order under the Master Agreement by Eligible Organization or of the Master Agreement by MHEC. MHEC also reserves the right to remove from participation in services associated with this Master Agreement any awarded Offeror's employee and/or subcontractor whose conduct is deemed unsatisfactory by MHEC. Termination of the Master Agreement shall in no way limit the parties' remedies at law and equity.

#### **C.4 SUPPLEMENTAL AGREEMENTS (ORDER OF PRECEDENT)**

Where the terms and conditions of the Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and provider may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws and regulations. Similarly, the Eligible Organization participating in this contract and technology solution provider may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any addendum or supplemental agreement is exclusively between the participating Eligible Organization and provider.

#### **C.5 CANCELLATION FOR LACK OF FUNDING (NON APPROPREATIONS)**

This provision applies only to publicly funded Eligible Organizations. The any resultant order (agreement) is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Eligible Organization may terminate its obligations if sufficient appropriations are not made by the governing entity to pay amounts due. In the event of non-appropriations, the Offeror shall be notified in writing of such non-appropriation at the earliest opportunity.

#### **C.6 RECORDS AND AUDIT**

Successful Offeror(s) shall retain and maintain all records and documents relating to the Master Agreement for six (6) years after final payment under an order made by the Eligible Organization, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MHEC, Eligible Organization, (including the procurement officer or designee), and appropriate governmental authorities with Eligible Organization's state at all reasonable times.

#### **C.7 MHEC NOT LIABLE FOR ELIGIBLE ORGANIZATION**

MHEC is not liable to Offeror for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement. Offeror, in its sole discretion, may discontinue selling products or services to any Eligible Organization who fails to make payments or otherwise fully performs pursuant to the terms and conditions of the Master Agreement. MHEC does not guarantee that any Eligible Organization will utilize or make any purchase under the Master Agreement.

#### **C.8 INDEMNITY, GENERAL AND PATENT**

The successful Offeror shall indemnify, defend and save harmless MHEC and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death

of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of MHEC.

The successful Offeror shall indemnify, defend and save harmless Eligible Organization and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of Eligible Organization.

With respect to anything provided to MHEC or procuring Eligible Organization by the Offeror pursuant to this RFP and/or any resulting agreement, the Offeror shall indemnify and defend MHEC and Eligible Organization and their respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and authorized use of such by procuring Eligible Organization.

#### **C.9 CONFIDENTIALITY**

As an instrumentality of state government, MHEC is subject to Public Record laws. As such, any provision that requires the terms of the contract, or specific information obtained during the term of the contract, to be kept confidential must be removed or modified to include "to the extent permitted by the law of relevant state." At a minimum, similar modifications may be required for public Eligible Organizations.

#### **C.10 APPLICABLE LAW**

As between MHEC and Offeror, the Master Agreement shall be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings arising out of the Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state of Minnesota. As between Eligible Organization and Offeror, orders pursuant any Master Agreement shall be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of an order pursuant to any Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

#### **C.11 COMPLIANCE WITH APPLICABLE LAWS**

(a) Offeror warrants that both in submission of its proposal and performance of any resultant contract that Offeror shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order 11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated into any resulting agreement by reference. (b) Offeror warrants and agrees to abide by all applicable Federal and

state laws, regulations and Executive Orders pertaining to equal opportunity. In accordance with such laws, regulations, and executive orders, Offeror agrees that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap. If Offeror is found to be not in compliance with applicable Federal or state requirements during the life of any resulting Master Agreement, Offeror agrees to take appropriate steps to correct these deficiencies. (c) Offeror warrants that both in submission of its proposal and performance of any resultant contract that Offeror will comply with all applicable Federal, state, and local laws, regulations, rules, and/or ordinances.

#### **C.12 NON-DISCRIMINATION**

In connection with the furnishing of services under any resulting agreement, the successful Offeror and all its Subcontractors shall agree not to discriminate against any recipients of services, or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. The Offeror shall comply with federal and state laws, rules and regulations applicable to Subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United States Government in such circumstances are incorporated herein by reference.

#### **C.13 FERPA (AND OTHER PRIVACY LAWS)**

Offeror agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws to the extent applicable to any product or service provided to Eligible Organizations.

#### **C.14 DATA OWNERSHIP**

Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Offeror will use Eligible Organization's data only for the purpose of fulfilling its duties under the Master Agreement or an order under the Master Agreement, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.

#### **C.15 ARBITRATION**

MHEC shall reject arbitration clauses in any Master Agreement or license. That does not mean MHEC is unwilling to resolve disputes amicably. However, as an instrumentally of state government, if MHEC or Eligible Organization waives a right, such as the right to trial, it is waiving the public's right.

#### **C.16 FORCE MAJEURE**

Neither Offeror nor MHEC nor procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and I or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the party unable to perform shall undertake reasonable action to notify the other parties of the same.

### **C.17 ILLEGAL CONDUCT**

All responses must include a statement as to whether or not the responding firm has been convicted of bribery or attempting to bribe a public official, barred from contracting with a unit of local, state or federal government as a result of bid rigging, or for any other reason or been convicted of a felony.

### **C.18 DEBARMENT & SUSPENSION**

Offeror represents and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (contract), by any government department or agency. If the Offeror cannot certify this statement, such Offeror must submit a written explanation. Furthermore, Offeror shall provide notice to MHEC if it becomes debarred or suspended at any point during the duration of any resulting agreement.

### **C.19 FINANCIAL CAPACITY**

MHEC reserves the right to require a Financial Capacity report consisting of the following:

- Sources of financing (shareholders, venture capital, etc.);
- Bank references and name of auditing firm;
- Last two annual reports and all quarterly reports since the last annual report;
- Identification of the Parent Corporation and any subsidiaries; and
- List of all current higher education customers in the MHEC region, and all customers for whom similar work was performed during the past two (2) years.

### **C.20 ASSIGNMENT**

Any Master Agreements entered into as a result of this RFP, or any portion thereof, may not be assigned by the selected Offeror without the expressed written consent of MHEC.

### **C.21 MARKETING**

Successful Offeror must assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material, and a full service, online MHEC-specific website to receive information on products, supplies, services and prices, and to place orders. Mutual review and evaluation of the marketing plans will be done, at a minimum, during annual reviews. The Offeror should exhibit the willingness to develop marketing materials and participate in opportunities that are available.

### **C.22 ANNOUNCEMENTS AND PUBLICITY**

No Offeror providing services to MHEC, or to the Eligible Organizations, shall appropriate or make use of the name or other identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

### **C.23 BUSINESS REVIEWS**

An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and successful Offeror in developing and refining the implementation of a Master Agreement in the Compact member states. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the successful Offeror on the effectiveness of its

implementation progression. There will be an annual meeting between successful Offeror and MHEC (and perhaps members of the oversight committee) to perform a Business Review. In addition, Offeror must attend on-site meetings on an ad hoc basis if requested by the contract manager to address contract performance issues.

#### **C.24 VENDOR REPRESENTATIVE**

Successful Offeror shall assign a senior level representative who shall be the primary MHEC contact for all matters related to this proposal and all sales and marketing efforts made pursuant to this proposal.

#### **C.25 CONTRACT ADMINISTRATION FEE (CAF)**

MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration and marketing of this program. All Offerors shall include a Contract Administrative Fee (CAF) of one-and-one half percent (1.5%) in their response. The CAF shall be in addition to discount or rebates offered to the Eligible Organizations. The proposer will be responsible for submitting the CAF with the quarterly report.

#### **C.26 QUARTERLY REPORT**

Contractor must submit business activity reports each quarter. The Quarterly Reports must include, at the minimum, the following information:

- Quarter number and year
- MHEC contract number
- Vendor name
- Name, phone number and email address of person who may be contacted for questions about the report
- Customer Name
- Customer Type (Higher Education, K-12, state agencies, cities, counties, local subdivisions)
- Address
- City
- State
- Zip Code
- Purchase Order Number
- Product Description
- Date Shipped or Delivered to End User
- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fees shall be submitted by end of the preceding month after the end of March, June, September, and December of each calendar year.

Calendar Quarter 1	(January 1 March 31)	Due April 30
Calendar Quarter 2	(April 1 to June 30)	Due July 31
Calendar Quarter 3	(July 1 to September 30)	Due October 31
Calendar Quarter 4	(October 1 to December 31)	Due January 31

### **C.27 SOVEREIGN IMMUNITY**

Nothing in this RFP, resulting Master Agreement(s) or Orders under the Master Agreement(s) shall be construed to deprive an Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability afforded by Eligible Organizations' state laws to Eligible Organization.