

STANDARD TERMS AND CONDITIONS (RFQ)

- 1. GENERAL:** Any Special Terms and Conditions included in the Initiation for Bids override these Standard Terms and Conditions. The Standard Terms and Conditions and any Special Terms and Conditions become a part of any contract entered into if any, or all parts of the bid are accepted by Arkansas State University, hereafter called University or ASU.
- 2. ACCEPTANCE AND REJECTIONS:** Arkansas State University reserves the right to accept or reject all or any part of a bid or any and all bids, to waive any informalities and minor technicalities and to award the bid to best serve the interest of the University and State of Arkansas. The Initiation for Bid does not in any way commit ASU to contract for the commodities/services listed herein.
- 3. BID SUBMISSION:** Bids must be submitted to Procurement Services on the Bid form with attachments, when appropriate, on or before the date and time specified for the bid opening. If the bid form is not used, the bid may be rejected. Each bid submitted must be properly identified with a minimum of Bid Number, Time and Date of Opening. The bid should be typed or printed in ink. Late bids will not be considered under any circumstances. All bids must be in a sealed envelope. We will not accept faxed or emailed bid submissions.
- 4. SIGNATURE:** Failure to sign a bid will disqualify it. The person signing the bid should show title or authority to bind the firm in a contract. Signature means a manual or an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is (a) unique to the person using it; (b) capable of verification; (c) under the sole control of the person using it; (d) linked to data in a manner that if the data are changed, the electronic signature is invalidated.
- 5. NO BID:** If not submitting a bid, the bidder should respond by returning the front page of the bid form, marking it a No Bid, and explaining the reason. Individual bidders may be removed from the University's Bidders List by failure to respond three times in succession.
- 6. PRICES:** Bid pricing on the unit price to include FOB destination to ASU. In cases of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the Initiation for Bid. Unless otherwise specified, the bid must be firm for acceptance for thirty (30) days from the bid opening dates. "Discounts from List" bids are not acceptable unless requested in the Initiation for Bid. In case of error in the extension of prices in the bid, the unit price will govern. Time or cash discounts will not be considered. Quantity discounts should be included in the price of the item.
- 7. QUANTITIES:** Quantities stated on "firm" contracts are actual requirements of the University. The quantities stated in "term" contracts are estimates only and are not guaranteed. Bid unit price on the estimated quantity and unit of measure

specified. The University may order more or less than the estimated quantity on any “term” contract.

8. BRAND NAME REFERNECES: Unless specified “No Substitutes”, any catalog brand name or manufacturer’s reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than the referenced specifications the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer’s illustration and complete description of the product(s) offered. If the bidder fails to submit such the bid can be rejected. The University reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified. The University may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in the bid invitation. If the bidder takes no exception to the specifications or referenced data in the bid, he/she will be required to furnish the product according to the brand, names, numbers, etc., as specified in the invitation for bid document.

9. GUARANTY: All items shall be newly manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the bid invitation. The bidders hereby guarantee that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specifications, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function for which it was furnished. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder’s obligations, under this paragraph, shall survive for a minimum of one year from the date of delivery, unless otherwise specified herein.

10. SAMPLES: Samples, or demonstrators, when requested, must be furnished free of expense to the University. If samples are not destroyed during the reasonable examination they will be returned to the bidder, if requested, within ten days following the complete examination of the item(s), at bidder expense. Each sample should be marked with the bidder’s name, address, bid number and item number.

11. TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE: Tests may be preformed on samples, or demonstrators, submitted with the bid, or on samples taken from regular shipments. In the event products tested fail to met or exceed all conditions and requirements of the original specifications, the cost of the sample used and the reasonable cost of the testing shall be borne by the bidder.

12. AMENDMENTS: The bid documents cannot be altered or amended after the bid opening except as permitted by regulations.

13. TAXES AND TRADE DISCOUNTS: Do not include state sales tax. Trade discounts should be deducted from the unit price and the net price should be shown on the bid.

14. AWARD: Any contract, as the results of this Invitation for Bid, shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bid. The University reserves the right to award the item(s) listed on this Invitation for Bid “individually”, by “groups”, “all or none”, or by any other method as deemed in the best interest of the University, as deemed by the ASU Procurement Official. In the event all bids exceed available funds, as certified by the appropriate fiscal officer, the Agency Procurement Official is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder, in order to bring the bid within the amount of available funds. **NOTE:** **Firm Contract:** A written University Purchase Order mailed, or otherwise furnished, to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract that requires the contractor to furnish the commodities or services as stated on the purchase order which will reference the original Invitation for Bid documents and number. Vendor is to immediately initiate action to comply with the requirements of the purchase order, which by reference, will incorporate all the requirements contained in the original Invitation for Bid. **Term Contracts:** A Contract Award will be issued to the successful bidder. It results in a binding obligation of the item(s) or service(s) for specific pricing and time frame without further action, at that time, by either party. The Contract Award does not authorize any shipment(s) or service(s) to be provided. Shipment(s) of commodities, or the providing of service(s), related to a “term contract” is only authorized by the receipt of a University Purchase Order, by the Contractor, that will list the actual requirement, pricing, and delivery locations and contract number.

15. TERM OF CONTRACT: The Invitation for Bid, Contract Award or Purchase Order will clearly state the period of time the contract will be in effect for each individual contract.

16. DELIVERY ON CONTRACTS: The Invitation for Bid, Contract Award and/or Purchase Order will state the number of days to place a commodity, equipment and/or service in the designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The ASU Procurement Services Department has the right to extend delivery if reasons appear valid. If the Contractor cannot meet the delivery date, the University reserves the right to procure the items elsewhere and any additional cost will be borne by the Contractor.

17. DELIVERY REQUIREMENTS: No substitutions or cancellations are permitted without prior written approval of ASU Procurement Services. Delivery shall be made during the normal University work hours of 8:00 am to 4:30 pm CT, unless prior

approval for other delivery time(s) have been obtained from ASU Procurement Services. Packing memoranda shall be enclosed with each shipment.

18. DEFAULT: All commodities furnished will be subject to inspections and acceptance of the University after delivery. Backorders, default in promised delivery, or failure to meet original specifications of the order will authorize ASU Procurement Services to cancel the contract, or any portion(s) of it, and procure the commodities, equipment and/or services elsewhere and charge the full increase in expense, if any, to the defaulting contractor. Consistent failure to meet delivery dates/requirements may cause removal from the vendor listing or suspension of eligibility for any award.

19. VARIATION IN QUANTITY: The University assumes no liability for commodities produced, processed or shipped in excess of the amount specified on University contracts.

20. UNIVERSITY/STATE PROPERTY: Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other items furnished to the contractor in contemplation hereunder shall remain the property of the University/State, be kept confidential to the extent allowed by Arkansas law, be used only as expressly authorized, and returned at the contractor's expense to the FOB point, properly identifying what is being returned.

21. PATENTS OR COPYRIGHTS: The contractor agrees to indemnify and hold the University harmless from claims, damages and costs, including legal fees, arising from infringements of any patents or copyrights.

22. INVOICING: The contractor shall be paid upon the completion of all the following: (1) delivery and acceptance of the commodities or services, (2) submission of a properly itemized invoice, with the specified number of copies that reflect the contract/purchase order number(s), item(s), quantity and pricing; (3) and the proper and legal processing of the invoice by the University. Invoices must be sent to the University, Attn: Accounts Payable Department, as shown on the original contract or purchase order.

23. ASSIGNMENT: Any contract entered into pursuant to any contract issued by the University is not assignable nor the duties there under delegable by either party without the written consent of both parties of the original agreed upon contract.

24. LACK OF FUNDS: The University may cancel any contract to the extent funds are no longer legally available for expenditures under the contract. The University will return any delivered but unpaid for commodities in normal conditions to the contractor. If the University is unable to return the commodities in a normal condition, and there are no funds legally available to pay for the commodities, the contractor may file a claim with the Arkansas Claims Commission for the actual expense.

25. DISCRIMINATION: In order to comply with the provisions of Act 54 of 1977, as amended, relating to unfair employment practices, the bidder/contractor agrees as follows: (a) the bidder/contractor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, disability, or national origin; (b) in all solicitations or advertisements for employees, the bidder/contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, disability, or national origin; (c) the bidder/contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder/contractor to comply with the statute, rules and regulations promulgated there under and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or part; (e) The bidder/contractor will include the provision of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractors or vendor.

26. ETHICS: It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a University/State of Arkansas contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business. Any violation of this ethics statement can result in the cancellation of any contract with the University.

27. CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION: Any contract, or amendment to any contract, executed by ASU – Jonesboro which exceeds \$25,000 shall require the contractor to disclose information as required under the terms of Executive Order 98-04 and the regulations pursuant thereto. Failure of any person or entity to disclose or the violations of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this order shall be considered a material breach of the terms of the contract. The material breach of the terms shall subject the party failing to disclose, or in violation, to all legal remedies available to the University under the provisions of existing law. The Contract and Grant Disclosure Certification Form (F-1 and F-2) shall be used for the disclosure purpose. No contract or amendment to any existing contract will be approved until the contractor completes and returns the disclosure form.

28. ANTITRUST: As part of the consideration for entering into any contract pursuant to an Invitation for Bid, the bidder named on the Invitation for Bid, acting herein by the authorized individual, its duly authorized agent, hereby assigns, sells and transfers to the University/State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or the State of Arkansas for price fixing, which causes of action have accrued prior to the date of the assignment and which relates solely to the particular goods or services purchased or produced by this State pursuant to any resulting contract with this University.

29. ARKANSAS TECHNOLOGY ACCESS CLAUSE: The vendor expressly acknowledges that state funds may not be expended in connection with the purchase of information technology unless that system meets certain statutory requirements in accordance with State of Arkansas technology policy standards relating to accessibility by persons with visual impairments. Accordingly, the vendor represents and warrants to ASU that the technology provided to ASU for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assisting devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If requested, the vendor must provide a detailed plan for making this purchase accessible and/or a validation of concept demonstration.

30. CANCELLATION: Either party may cancel any contract or item award, for cause, by giving a thirty (30) day notice of intent to cancel. Cause for the University to cancel will include, but is not limited to, cost exceeding current market prices for comparable purchases, request for increase in price during the period of the contract, or failure to perform to contract conditions. The contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration, or cancellation. Cancellation by the University does not relieve the contractor of any liability arising out of a default or nonperformance. If a contract is cancelled due to a request for increases in pricing, or failure to perform, that contractor will be removed from the bidders/vendors list for a period up to twenty-four (24) months. Cause for the vendor to cancel a contract will include, but is not limited to, the item(s) being discontinued and unavailable from the manufacturer or non-payment of vendor invoices by the University.

31. ALTERATION OF ORIGINAL RFQ/RFP DOCUMENT: The original written or electronic language of the RFQ/RFP shall not be changed or altered, except by approved written addendum issued by ASU Procurement Services. This does not eliminate a vendor/contractor from taking exception(s) to these documents, but does clarify that he/she cannot change the original document’s written or electronic language. If a vendor/contractor wishes to make exception(s), to any of the original language, they must be submitted by the vendor/contractor in separate written or electronic, language in a manner that clearly explains the exception(s). If a vendor/contractor’s submittal is discovered to contain alterations/changes to the original written or electronic documents,

the vendor's/contractor's response may be declared as "non-responsible" and the response will not be considered.

32. SOVERIGN IMMUNITY: Nothing in this agreement shall be construed to waive the sovereign immunity of the State of Arkansas or any entity thereof, including Arkansas State University.