



ARKANSAS STATE UNIVERSITY

# **TERMS AND CONDITIONS FOR ASTATE**

## **GENERAL TERMS AND CONDITIONS**

### **1. Legal Considerations**

Any contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the University regarding this request for proposal or any resultant contract shall be brought in the Arkansas State Claims Commission. Any legal proceedings against vendor shall be brought in the State of Arkansas administrative or judicial forums. Venue will be Craighead County, Arkansas or the Eastern District of Arkansas, Jonesboro Division.

### **2. Public Disclosure**

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any vendor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

### **3. Ethical Standards Law**

As an agency of the State of Arkansas, the University is bound by and will comply and require compliance with the "Ethics in Public Contracting Laws" found in Arkansas Code Annotated (ACA), Section § 19-11-701 et seq. Definitions of terms used in this law can be found in Section §19-11-701 of the ACA. Any violation of these ethics laws can result in the cancellation of any contract with the University.

### **4. Term of the Contract**

By mutual agreement, the University and the vendor may elect to extend the contract for a maximum of seven years, in one or two-year increments or any portion thereof, but not less than monthly increments, at the contract compensation rate for those renewal periods. In no case will the Contract be extended to a period greater than seven years from the day the contract is signed by the University.

The University shall notify the vendor at least ninety (90) days prior to the end of the contract period or extension thereof if the University intends to renew the contract. If notification is not made, the contract will terminate at the end of the contract period or current extension thereof. In the event that the anticipated term of this contract extends beyond the current biennial period, the contract will be terminable on the part of the University without cause at the end of the current biennial period. However, the university may agree to continue the contract but in no case will any renewal, automatic or otherwise, cause the contract to continue beyond a biennial period for which the contract is renewed.

Any services or products on contract accepted by the state must be paid for but does not obligate the university to continue the contract beyond the end of a biennial period.

## **5. Termination of Contract**

The contract resulting from this request for proposal shall be subject to the following termination provisions. The University may terminate the contract:

- A. For default
- B. For convenience
- C. For unavailability of funds

## **6. Termination for Default**

The University may terminate this contract, when the University determines that the vendor or any subcontractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to cure such failure within a reasonable period of time specified by the University, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default".

In the event of Termination for Default, the University may procure, upon such terms and in such manner as the University may deem appropriate, supplies or services similar to those terminated, and the vendor shall be liable to the University for any Excess Cost for such similar supplies or services. In addition, the vendor shall be liable to the University for Administrative Cost incurred by the University in procuring such similar supplies or services.

In the event of Termination for Default, the Vendor shall be paid for those deliverables, which have been delivered to the University. Payments for completed deliverables delivered to and approved by the University shall be at the contract price. Payment for partially completed deliverables delivered to and not yet approved by the University shall be an amount determined by the University.

The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

## **7. Termination for Convenience**

The University may terminate performance of work under the contract in whole or in part whenever the University shall reasonably determine that such termination is in the best interest of the University.

Upon receipt of notice of termination for convenience, the vendor shall be paid the following:

- At the contract price (s) for completed deliverables delivered to and accepted by the University;
- At a price mutually agreed by the vendor and the University for partially completed deliverables.

## **8. Termination for Unavailability of Funds**

In the event that funds for the contract become unavailable, the University shall have the right to terminate the contract without penalty and upon the same terms and conditions as a Termination

for Convenience. Availability of funds will be determined at the sole discretion of the University.

### **9. Procedure on Termination**

Upon delivery by certified mail or any delivery requiring signature to the vendor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the vendor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- Place no further orders or subcontracts for materials or services;
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- Assign to the University in the manner and to the extent directed by the Contract Administrator all of the right, title, and interest of the vendor under the orders or subcontracts so terminated, in which case the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- With the approval or ratification of the Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the contract;
- Transfer title to the University (to the extent that the title has not already been transferred) and deliver in the manner, at the time, and extent directed by the Contract Administrator, all files, processing systems (excluding equipment and operating systems), data manuals, or other documentation, in any form, that relate to the work terminated by the Notice of Termination;
- Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination;
- Take such action as may be necessary, or as the Contract Administrator may direct, for the protection and preservation of the property to the contract which is in the possession of the vendor and in which the University has or may acquire an interest.

The vendor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

### **10. Termination Claims**

After receipt of a Notice of Termination, the vendor shall submit to the Contract Administrator

any termination claims in the form and with the certification prescribed by the Contract Administrator. Such claims shall be submitted promptly. The vendor and the University may agree upon the amounts to be paid to the vendor by reason of the termination of work pursuant to this article. The contract shall be amended accordingly.

In the event of the failure of the vendor and the University to agree in whole or in part as to the amounts with respect to costs to be paid to the vendor in connection with the termination of work pursuant to this article, the University shall determine on the basis of information available, the amount, if any, due to the vendor by reason of termination and shall pay to the vendor the amount so determined.

The vendor shall have the right of appeal, as stated under Disputes, for any such determination made by the Contract Administrator.

#### **11. Vendor as Independent Contractor**

It is expressly agreed that the vendor and any subcontractors and agents, officers, and employees of the vendor or any subcontractors in the performance of this contract shall act in an independent capacity and not as officers or employees of the University. It is further expressly agreed that this contract shall not be construed as a partnership or joint venture between the vendor or any subcontractor and the University.

#### **12. Vendor Background Checks**

Vendor shall conduct pre-employment criminal background checks of applicants for employment. University Policy, <https://www.asusystem.edu/dotAsset/8658eb69-ba06-44fc-9215-e998240bf389>, requires that all businesses contracting with Arkansas State University shall provide proof that Contract Workers have undergone background checks consistent with the above policy. Neither party will not allow any of its employees, subcontractors or agents to engage in behavior that constitutes sexual harassment.

Neither party will not knowingly employ illegal immigrants and will not permit its subcontractors to employ illegal immigrants. All employees, subcontractors and subcontractor's employees MUST have proper identification - including photo ID's - reflecting both vendors name and the name of the employee. Vendor will not knowingly permit its employees, subcontractors or employees of subcontractors who are registered sex offenders to work on the campus of the Customer. Further, vendor shall not knowingly permit its employees, subcontractors or employees of subcontractors to engage in sexually harassing behavior toward the Customer's faculty, staff, students, guests, or any other persons present on the campus.

#### **13. Force Majeure**

Neither party will be liable for any failure to perform if the failure to perform the contract arises out of causes beyond the control and without the fault of negligence of the party. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, strikes, epidemics, and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the party.

#### **14. Disputes**

Any dispute concerning performance of the contract shall be decided by Arkansas State University-Jonesboro through its head of Contract Administration who shall reduce his/her decision to writing and serve a copy to the vendor. Arkansas State University-Jonesboro's decision will be final pursuant to ACA § 19-11-246. Pending final determination of any dispute hereunder, the vendor shall proceed diligently with the performance of the contract and in accordance with the Directors or the University's direction.

#### **15. Confidentiality of Information**

The vendor shall treat all information, and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract as confidential information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder.

#### **16. Public Disclosure**

Upon signing of the contract by all parties, the terms of the contract shall become available to the public, pursuant to the provisions of ACA § 25-19-101 et seq. unless subject to lawful exemption.

#### **17. Inspection of Work Performed**

Arkansas State University - Jonesboro, or their authorized representatives shall, at all reasonable times, have the right to enter into vendor's premises, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work being performed.

The vendor and all subcontractors must provide access to all reasonable facilities and provide assistance, if deemed necessary by the requesting agency/personnel. All inspections and evaluations shall be performed in such manner as will not unduly delay work.

#### **18. Subcontracts**

The vendor is fully responsible for all work performed under the contract. The vendor may, with the consent of the University, enter into written subcontract(s) for performance of certain of its functions under the contract. The vendor shall not enter into any written subcontract without the prior written consent of the Contract Administrator.

No subcontract, which the vendor entered into with respect to performance under the contract, shall in any way relieve the vendor of any responsibility for performance of its duties.

The vendor shall give the Contract Administrator immediate notice in writing by certified mail or any action or suit filed and prompt notice of any claim made against the contractor by a subcontractor or vendor which, in the opinion of the vendor, may result in litigation related in any way to the contract or the State.

#### **19. Indemnification**

The vendor agrees to indemnify, defend, and hold harmless the University, its officers, agents and employees from: Any claims, losses or injuries to the person or property, resulting from

services rendered by a subcontractor, person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract.

- Any claims, losses or injuries to the person or property to any person or firm injured or damaged by the erroneous or negligent acts, including without limitation disregard of Federal or State regulations or statutes, of the vendor, its officers, employees, or subcontractors in the performance of the contract.
- Any claims, losses or injuries to the person or property resulting to any person or firm injured or damaged by the vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes.
- Any failure of the vendor, its officers, employees, or subcontractors to observe Arkansas and applicable Federal laws, including but not limited to labor laws and minimum wage laws.

## **20. Assignment**

The vendor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Contract Administrator.

## **21 Employment Practices**

The vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), handicap or other protected status. The vendor must take affirmative actions to ensure that employees, as well as applicants for employment, are treated without discrimination because of their protected status.

Such action shall include, but not be limited to, the following: Employment

- Promotion
- Demotion or transfer
- Recruitment or recruitment advertising
- Layoff or termination
- Rates of pay or other forms of compensations, and
- Selection of training, including apprenticeship.

The vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the clause.

The vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the vendor; state that all qualified applicants will receive consideration for employment without regard to protected status.

The vendor shall comply with all state and federal nondiscrimination laws and regulations.

All businesses contracting with Arkansas State University shall provide proof that Contract Workers have undergone background checks consistent with the ASU System Policy to include Criminal and Sexual Offender.

**22. Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under the law or equity, notwithstanding any such forbearance or indulgence.

**23. State Property**

The vendor shall be responsible for the proper custody and care of any State-owned property furnished for vendor's use in connection with the performance of this contract and the vendor will reimburse the State for its loss or damage, normal wear and tear expected.

**24. Contract Severability**

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the University and the vendor shall be relieved of all obligations arising under such provision; however, if the remainder of the contract is capable of performance, it shall not be affected by such declarations or finding and shall be fully performed.

**245. Attorney's Fees**

In the event that either deems it necessary to take legal action to enforce any provision of the contract, in the event the State prevails, the vendor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

**26. Environmental Protection Act Compliance**

The vendor shall be in compliance with all applicable standards, orders, or requirements issued under Section 305 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. The vendor shall report violations to both the State of Arkansas and to the U.S. EPA Administrator for Enforcement.

**27. Liability**

In the event of non-performance of contractual obligation by the vendor or his agents which result in the determination by Federal authorities on non-compliance with Federal regulations and standards, the vendor will be liable to the University in full for all penalties, sanctions and disallowance assessed against the University.



**28. Records Retention**

In accordance with Federal regulation, the vendor agrees to retain all pertinent records for five (5) years after final payment is made under this contract or any related subcontract. In the event any audit litigation or other action involving these pertinent records is started before the end of the five (5) year period, the vendor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

**29. Access to Vendor's Records**

In accordance with Federal regulation governing contracts in excess of \$10,000, the vendor consents to the required access to pertinent records. This access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the vendor, which are directly pertinent to any services performed under the contract. The vendor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the pertinent records of subcontractors. All businesses contracting with the University shall provide proof that Contract Workers have undergone background checks consistent with the above policy

## SECTION 60 STANDARD TERMS & CONDITIONS

1. **General.** Any Special Terms and Conditions included in a Request for Proposals (RFP), Invitation for Bid (IFB), Purchase Order (PO) override these Standard Terms and Conditions. The Standard Terms and Conditions and any Special Terms and Conditions shall become part of the contract entered into if any or all parts of the proposal(s) are accepted by University.
2. **Acceptances and rejection.** The University reserves the right to accept or reject all or any part of a proposal(s) or any and all proposals, to waive minor technicalities, and to award the proposal to best serve the interest of the University and the State of Arkansas. The award does not in any way commit the University to contract for the commodities/services listed herein.
3. **Proposal Submission.** Proposals must be submitted to the University's Office of Procurement Services on this form with attachments, when appropriate, on or before the date and time specified for the proposal opening. If this form is not used, the proposal may be rejected. Each proposal submitted must be properly identified with a minimum of Proposal Number, Time and Date of Opening. The proposal should be typed or printed in ink. Late proposals will not be considered under any circumstances and will be returned to submitter, unopened. We will not accept emailed submissions.
4. **Signature.** Failure to sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his firm in a contract. Signature means a manual, 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 a 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 were changed, the electronic signature is invalidated.
5. **No Proposal.** If not submitting a proposal, the interested party should respond by returning the front page of this form, making it a "No Response", and explaining the reason. Individual firm may be removed from the University's Vendor List by failure to respond three times in succession.
6. **Prices.** Bid pricing on the unit price to include FOB destination to the University. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified on the RFP/Bid invitation opening date. "Discount from list" proposals are not acceptable unless requested in the RFP/Bid/PO. Time or Cash discounts will not be considered. Quantity discounts should be included in the priced offered.
7. **Quantities.** The 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 References.** Unless specified “No Substitutes”, any catalog brand name or manufacturer’s reference used in the RFP/Bid is descriptive only, not restrictive and used to indicate the type and quality desired. Unless otherwise specified herein, bids on brands of like nature and quality will be considered. If proposing on other than referenced specifications, the proposal must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer’s illustrations and complete descriptions of the product offered. The University reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the University may require the vendor to supply additional descriptive material. The vendor guarantees that the product offered will meet or exceed specifications identified in this RFP/Bid invitation. If the bidder takes no exception to specifications or reference date in this bid, he will be required to furnish the product according to brand names, numbers, and other terms as specified in this RFP/Bid.

9. **Guaranty.** All items bid 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 vendor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. The vendor further guarantees that if the items furnished hereunder are to be installed by the vendor, such items will function properly when installed. The vendor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor’s obligations under this paragraph shall survive for a period 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 reasonable examination they will be returned at vendor’s expense, if requested, within ten days following the opening of proposals. All demonstrators will be returned after reasonable examination. Samples should show vendor’s name, address, proposal and item number.

11. **Testing Procedures for Specifications Compliance.** Test may be performed on samples or demonstrators submitted with the bid or samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used and the reasonable cost of the testing shall be borne by the vendor.

12. **Amendments.** The proposal cannot be altered or amended after the proposal opening except as permitted by regulation.

13. **Taxes and Trade Discounts.** Do not include state or local sales taxes in the bid price unless specifically requested. Trade discounts should be deducted from the unit price and net price should be shown in the bid.

14. **Award.** Any contract, as the results of an RFP or Bid, shall be awarded with reasonable promptness by written notice to the successful vendor whose proposal meets the requirements and criteria set forth in the RFP/Bid. The University reserves the right to award item(s) listed in this RFP/Bid “all or none”, “individually” by “groups” or by any other method as deemed in the

best interest of the University, as deemed by the University Contract Administration Official. In the event all proposals exceed available funds, as certified by the appropriate fiscal officer, the Agency Contract Administration Official is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate any adjustment of the submitted pricing, including changes in the requirements, with a vendor, in order to bring the proposal within the amount of available funds.

15. **Term of Contract.** The RFP/Bid/PO will show the period of time the term contract will be in effect.

16. **Delivery on Contracts.** The RFP/Bid/PO will show the number of days to place a commodity, equipment and/or service in the University's designated location under normal conditions. If the Vendor cannot meet the state delivery, alternate delivery schedules may become a factor in an award. The University Office of Procurement Services has the right to extend delivery if reasons appear valid. If the Vendor cannot meet the delivery date, the University reserves the right to procure the item(s) elsewhere and any additional cost will be borne by the Vendor.

17. **Delivery Requirements.** No substitutions or cancellations are permitted without written approval of the University. Delivery shall be made during work hours only, 8:00 am to 4:45 p.m., Monday - Friday excluding legal holiday, unless prior approval for other delivery has been obtained from the University. Packing memoranda shall be enclosed with each shipment.

18. **Default.** All commodities, equipment or services furnished will be subject to inspection and acceptance of the University after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the University Office of Procurement Services to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, in any, in cost and handling to the defaulting vendor. The vendor must give written notice to the University of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.

19. **Variation in Quantity.** The University assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the purchase order/contract.

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, be kept confidential to the extent allowed by Arkansas law, be used only as expressly authorized, and returned at the vendor's expense to the FOB point, properly identifying what is being returned.

21. **Patents on Copyrights.** The vendor agrees to indemnify and hold the University and the State of Arkansas harmless from all claims, damages, and costs including attorneys' fees, arising from infringement of patents or copyrights.

22. **Invoicing.** The vendor 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; and (3) the proper and legal processing of the invoice by the University. Invoices must be sent to the University: Attn: Accounts Payable Office, as shown on the original contract or purchase order.

23. **Assignment.** Any contract entered into pursuant to the RFP/Bid/PO is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.

24. **Lack of Funds.** The University may cancel this contract to the extent said funds are no longer legally available for expenditure. The University will return any delivered but unpaid for commodities in normal condition to the contractor. If the University is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, or, if the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim with the Arkansas State Claims Commission.

25. **Discrimination.** In order to comply with the provision of Act 54 of 1977, relating to unfair employment practices, vendor agrees as follows: (a) vendor 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 vendor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, disability or national origin; (c) vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be canceled, terminated or suspended in whole or in part; and (e) the vendor will include the provision of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

**“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination on the basis of race, color, religion, sex, or national origin, against qualified protected veterans on the basis of veteran status, and against qualified individuals on the basis of disability; and require affirmative action by covered prime contractors and subcontractors to ensure equality of opportunity in all aspects of employment, and to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”**

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 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. The bidder guarantees that he has not retained a person to solicit or secure this 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 bidder for the purpose of securing business.

**27. Contract and Grant Disclosure and Certification.** Any contract, or amendment to any contract, executed by the University, which exceed \$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, regulations or policy promulgated by the Arkansas 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 term shall subject the party failing to disclose, or in violation, to all legal remedies available to the University under the provision of existing law. The attached Contract Grant and Disclosure and 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 vendor completes and returns the disclosure form.

**28. Antitrust Assignment.** As part of the consideration for entering into any contract pursuant to the RFP/Bid/PO, the vendor named on the front of the PO, acting herein by his authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the University, 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 this assignment and which relate solely to the particular goods or services purchased produced by this State pursuant to any resulting contract with the University.

**29. Cancellation.** Either party may cancel any contract or item award, for cause, by giving a thirty (30) day written 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 prices during the period of the contract, or failure to perform to contract conditions. The vendor will be required to honor all purchase orders that were prepared and dated prior to the date of expirations, or cancellation. Cancellation by the University does not relieve the vendor of any liability arising out of fault or nonperformance. If a contract is canceled due to a request for increase in pricing, or failure to perform, that vendor will be removed from the bidder/vendor 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 or vendor invoices by the University.

**30. Alteration of original IFB/RFP/PO Document.** The original written or electronic language of the IFB/RFP/PO shall not be changed or altered, except by approved written addendum issued by the University Office of Procurement Services. This does not eliminate a vendor 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 wishes to make exception(s), to any of the original language, they must be submitted by the vendor in a separate written or electronic document, in language that clearly explains the exception(s). If a vendor'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-responsive" and the response will not be

considered.

31. **Sovereign 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-Jonesboro.

## **PROCUREMENT**

### **1. Rules of Procurement**

To facilitate the procurement of requests for proposal, various rules have been established. They are described in the following paragraphs.

### **2. Point of Contact**

The request for proposals Issuing Officer is the sole point of contact from the date of release of this request for proposals until the selection of the successful vendor. Vendors wishing to submit questions and requests for clarification should mail or email all such correspondence to the Issuing Officer, as outlined in the anticipated procurement Timetable (Section 10.5).

### **3. Written Questions Concerning the Request for Proposals**

**Written questions must be submitted to the Issuing Officer. The closing date for receipt of questions will be November 5, 2020.** All questions must be marked “Questions” and the proposal number must be indicated on the email transmission. Each question should reference the paragraph number. The questions will be answered by email that and posted on our website.

### **4. Requests for Proposals Amendments**

The University reserves the right to amend the request for proposals prior to the date for proposal submission. Amendments, addenda and clarifications will be sent to all organizations requesting copies of the request for proposals.

### **5. Cost of Preparing Proposals**

Costs for preparing the proposals are solely the responsibility of the vendor. The University will provide no reimbursements for such costs. Any costs associated with any oral presentations to the University will be the responsibility of the vendor and may not be billed to the University.

### **6. Disposition of Proposals**

All proposals become the public property of the University and will be a matter of public record subject to the provisions of Act 482 of 1979, as amended by Act 600 of 1981 and Acts 517 and 760 of 1983, Arkansas Purchasing Law. If the proposal includes material, which is considered by the vendor to be proprietary or confidential under Arkansas law, the vendor shall so designate the material. The successful proposal will be incorporated into the resulting contract and will be a matter of public record subject to the provisions of ACA § 25-19-101 et seq. The State of Arkansas shall have the right to use all ideas, or adaptations of those ideas, contained in any proposal received in response to this request for proposals. Selection or rejection of the proposal will not affect this right.

### **7. Proposal Amendments and Rules of Withdrawal**

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the University, signed by the vendor. Unless requested by the University, the University will not accept any amendments, revisions, or alterations to the request for proposals after the proposal due date.

## **8 Acceptance of Proposals**

The University reserves the right to request necessary amendments, reject any or all proposals received, or cancel this request for proposals according to the best interest of the University. Where the University may waive minor irregularities, such waiver shall in no way modify the request for proposal requirements or excuse the vendor from full compliance with the request for proposal specifications and other contract requirements if the vendor is awarded the contract.

## **9. Evaluation of Proposals**

Proposals will be evaluated in three (3) phases. The first phase will determine if the mandatory requirements of this request for proposals have been agreed to and/or met. Failure to comply will deem a proposal non-responsive. The University may reject any proposal that is incomplete. However, the University may waive minor irregularities. Procurement Services completes this phase.

The University will base the second phase on evaluation of the Technical/Business proposal by an impartial committee appointed. Points will be awarded to each proposal based on a comparative formula of relative weights as described in this request for proposals. The contract will be awarded to the respondent whose proposal receives the highest cumulative point total.

The third phase will be the opening of the cost proposal by Procurement Services, and reviewed by the evaluation committee appointed by the University.

## **10. Award Notice**

The notice of intended contract award will be sent to all respondents, by certified mail, return receipt requested.

## **11. Protest of Award**

Within fourteen (14) days after the date that the vendor knew or should have known of the cause giving rise to protest, the prospective vendor must file a formal written notice of that protest with the Vice Chancellor of Finance and Administration. Failure to do so shall constitute a waiver of any rights to administrative decision under ACA § 19-11-244. Further details on protesting awards may be obtained by contacting the issuing Officer.



## Purchase Order Terms and Conditions

1. **GENERAL:** All terms and conditions stated in the invitation for bid govern this contract.
2. **PRICES:** Prices are firm and not subject to escalation, unless otherwise specified in the invitation for Bid.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** The University must pay State Sales Tax. Itemize State Sales Tax when applicable on your invoices.
5. **BRAND NAME REFERENCES:** Contractor guarantees commodity delivered is the same as specified in his bid.
6. **GUARANTY:** All items are to be newly-manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in bid invitation.  
Contractor guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished. Contractor further guarantees that if the items furnished hereunder are to be installed by the contractor that such items will function properly when installed. Contractor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling, and registration. Contractor's obligations under this paragraph shall survive for a period of one (1) year from date of delivery, unless otherwise specified in the Invitation for Bid.
7. **DELIVERY:** On the face of the Purchase Order is shown the number of days required to place the commodity in the University's designated location under normal conditions. Consistent failure to meet delivery without valid reason may cause removal from bidders list or suspension of eligibility for award.
8. **BACKORDERS OR DELAY IN DELIVERY:** Backorders or failure to deliver within the time required may be default of the contract. Contractor must give written notice to Procurement Services of the reason and the expected delivery date. If reason is not acceptable, contractor is in default. The University Procurement Services has the right to extend delivery if reasons appear valid. If date is not acceptable the university may buy elsewhere.
9. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of Procurement Services. Delivery shall be made during work hours only, 8:00 a.m. to 4:30 p.m. Packing memorandum shall be enclosed with each shipment.
10. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the university after delivery. Default in promised delivery or failure to meet specifications

authorizes Procurement Services to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to defaulting contractor.

**11. VARIATION IN QUANTITY: THE UNIVERSITY:** assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.

**12. INVOICING:** Contractor shall submit an original and one (1) copy of an itemized invoice showing bid number and purchase order number. Invoices must be sent to Accounts Payable-accounts payable@astate.edu.

**13. UNIVERSITY PROPERTY:** Any specifications, drawings, technical information, dies cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for the use hereunder shall remain property of the university, be kept confidential, be used only as expressly authorized, and returned at the contractor's expense, properly identifying what is being returned.

**14. ASSIGNMENT:** This contract is not assignable nor the duties hereunder delegable by either party without the written consent of the other party to the contract.

**15. OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the university have the right to pursue any other remedy permitted by law or in equity.

**16. LACK OF FUNDS:** The university may cancel this contract to the extent funds are no longer legally available for expenditure under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor. If the University is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.

**17. CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM:**  
The failure of any individual or entity to disclose as required under any term of executive order 98-04, or the violation 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, lease, purchase agreement, or grant and shall subject the party, failing to disclose or in violation, to all legal remedies available to the Agency under the provisions of the existing law.

**18. TECHNOLOGY ACCESS:** When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in

36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State 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:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
  - Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
  - After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
  - Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
  - Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
  - Integrating into networks used to share communications among employees, program participants, and the public; and
  - Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
- State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an

agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product.

For purposes of this section, 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 assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42

U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase

or use of an information technology product that does not meet these standards.

**19. PERFORMANCE STANDARDS:** Act 557 of 2015 enacted by the Arkansas General Assembly requires that contracts include performance standards. By acceptance of this Purchase Order, the Contractor agrees to the performance of any technical/general services in a professional, comprehensive manner. This may include, but not be limited to, ensuring milestone deadlines are met, and services are delivered in a professional, comprehensive manner, consistent with the contracted skill level. Any special performance standards outlined in any associated contract or agreement to this Purchase Order may be in addition to the above performance standards.

**20. EQUAL OPPORTUNITY:** “This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination on the basis of race, color, religion, sex, or national origin, against qualified protected veterans on the basis of veteran status, and against qualified individuals on the basis of disability; and require affirmative action by covered prime contractors and subcontractors to ensure equality of opportunity in all aspects of employment, and to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”

**21. ISRAEL BOYCOTT NOTICE:** In order to comply with Act 710 of 2017, prohibiting a public entity from contracting with a person or company boycotting Israel, the bidder/contractor represents, warrants and certifies that: (a) It is not currently engaged in a boycott of Israel; and (b) agrees that for the duration of any resulting contract award, it will not engage in a boycott of Israel

**22. VENDOR BACKGROUND CHECKS:** Vendor shall conduct pre-employment criminal background checks of applicants for employment. University Policy, <https://www.asusystem.edu/dotAsset/8658eb69-ba06-44fc-9215-e998240bf389>, requires that all businesses contracting with Arkansas State University shall provide proof that Contract Workers have undergone background checks consistent with the above policy. Neither party will not allow any of its employees, subcontractors or agents to engage in behavior that constitutes sexual harassment.

Neither party will not knowingly employ illegal immigrants and will not permit its subcontractors to employ illegal immigrants. All employees, subcontractors and subcontractor's employees MUST have proper identification - including photo ID's - reflecting both vendors name and the name of the employee. Vendor will not knowingly permit its employees, subcontractors or employees of subcontractors who are registered sex offenders to work on the campus of the Customer. Further, vendor shall not knowingly permit its employees, subcontractors or employees of subcontractors to engage in sexually harassing behavior toward the Customer's faculty, staff, students, guests, or any other persons present on the campus.