

Texas A&M University System Health Science Center Attachment A

TERMS AND CONDITIONS

- 1. REQUIREMENTS OF AWARDED BID**
 - 1.1 Vendor must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
 - 1.2 Vendor must have priced per unit shown. Unit prices shall govern in the event of extension errors.
 - 1.3 Awarded bid was submitted to the A&M Health Science Center (HSC) on or before the hour and date specified for the bid opening.
 - 1.4 Late and/or unsigned bids were not considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
 - 1.5 Awarded bid quoted F.O.B. destination, freight prepaid and allowed unless otherwise stated within the purchase order.
 - 1.6 Bid prices are to be firm for HSC acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts were not considered in determining an award. Cash discounts offered will be taken if earned.
 - 1.7 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initiated by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by HSC Purchasing Office based on a written acceptable reason.
 - 1.8 Purchases made for HSC are exempt from the State Sales tax and Federal Excise tax. Awarded bid does not include tax. Excise Tax Exemption Certificate will be furnished by HSC upon request.
 - 1.9 HSC reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the HSC.
 - 1.10 Consistent and continued tie bidding could cause rejection of bids by HSC and/or investigation for antitrust violations.
 - 1.11 Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.
 - 2. SPECIFICATIONS**
 - 2.1 Vendor is to furnish items as specified by model/catalogue numbers, brand names or manufacture referenced on the purchase order
 - 2.2 Unless otherwise specified, items shall be new and unused and of current production.
 - 2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
 - 2.4 HSC will not be bound by any oral statement or representation contrary to the written specifications of the purchase order.
 - 2.5 Manufacturer's standard warranty shall apply unless otherwise stated in the purchase order.
 - 3. TIE BIDS**

Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) (3) and 113.8 (preferences).
 - 4. DELIVERY**
 - 4.1 On bid form, show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days means calendar days, unless otherwise specified. Failure to state delivery time obligates Bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
 - 4.2 If delay is foreseen, vendor shall give written notice to HSC. Vendor must keep HSC advised at all times of order status. Default of promised delivery (without accepted reasons) or failure to meet specifications authorizes HSC to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
 - 4.3 No substitutions permitted without HSC written approval.
 - 4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from HSC.
 - 4.5 Each shipment must be accompanied by a packing slip which shows the HSC Purchase Order number and the description, quantity shipped and any back-ordered quantity for each item shipped. Each package must be clearly marked with the destination address and HSC Purchase Order number.
 - 5. INSPECTION AND TESTS**

All goods will be subject to inspection and test by HSC. Authorized HSC personnel shall have access to any supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the HSC's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.
 - 6. AWARD OF CONTRACT**

A response to an informal request for bids is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a HSC purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas as the same may be amended from time to time. Any legal actions must be filed in Brazos County, Texas.
 - 7. PAYMENT**

Vendor shall submit one (1) copy of an itemized invoice showing HSC purchase order number. HSC will incur no penalty for late payment if made in 30 or fewer days from receipt of goods or services and an uncontested invoice.
 - 8. PATENTS OR COPYRIGHTS**

Vendor agrees to protect the HSC from claims involving infringement of patents or copyrights.
 - 9. VENDOR ASSIGNMENTS**

Vendor hereby assigns to HSC any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to this award must give the purchase order number.
 - 10. BIDDER AFFIRMATION**

Accepting this purchase order with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists. By acceptance of the attached purchase order, the bidder hereby certifies that:

 - 10.1 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
 - 10.2 The bidder is not currently delinquent in the payment of any franchise tax owed the State of Texas.
 - 10.3 Neither the bidder nor the firm, corporation, partnership or institution represented by the bidder, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, or the Federal Antitrust Laws, (see Section 9 above) nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
 - 10.4 Pursuant to Section 2155.004(a) Government Code the bidder has not received compensation for participation in the preparation of the specification for the bid.
 - 10.5 Pursuant to Section 231.006 (d), Family Code, re: child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
 - 10.6 Pursuant to Section 2155.004(b) Government Code the bidder certifies that the individual or business entity name in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
 - 10.7 The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution of performance of this contract.
 - 10.8 Bidder agrees that any payment due under this contract will be applied towards eliminating any debt or delinquency, regardless of when it arises, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
 - 10.9 Bidder certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:
Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Bidder: _____
Date of Employment with Bidder: _____
 - 10.10 Bidder agrees to comply with Government Code 2155.4441, pertaining to service contract use of products in the State of Texas.
- 10.11 Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 11. BUSINESS OWNERSHIP**

Pursuant to Section 231.006 (c), Family Code, bid should include name and Social Security Number of each person with at least 25% ownership of the business entity submitting the bid. Vendor that have pre-registered this information on the TBPC Centralized Master Vendor List have satisfied the requirement. If not pre-registered, attach name & social security number for each person. Otherwise, this information must be provided prior to contract award.
- 12. NOTE TO BIDDER**

Any terms and conditions attached to a bid will not be considered unless specifically referred to on the bid form.
WARNING: Such terms and conditions may result in disqualification of the bid (e.g. bids with the laws of a State other than Texas, requirements for prepayment, limitation on remedies, etc.).
- 13. ALTERNATIVE DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by A&M Health Science Center and the Contractor to attempt to resolve any claim for breach of contract made by the contractor:

 - (a) A contractor's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to Barry Nelson Ph. D., Vice President for Finance and Administration. Said notice shall specifically state the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall be given to all other representatives of A&M Health Science Center and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, Texas Government Code.
 - (b) The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by A&M Health Science Center, if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 - (c) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by A&M Health Science Center nor any other conduct of any representative of A&M Health Science Center relating to the contract shall be considered a waiver of sovereign immunity to suit.
 - (1) The submission, processing, and resolution of the contractor's claim is governed by the published rules adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found under Title 1, Part 3, Chapter 68 of the Texas Government Code.
 - (2) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.
 - (3) The designated individual responsible on behalf of A&M Health Science Center for examining any claim or counterclaim and conducting any negotiations related thereto as required under Section 2260.052, Subtitle F, Title 10 of Texas Government Code shall be Barry Nelson, Ph. D., Vice President for Finance and Administration (979) 458-7250.
- 14. PUBLIC DISCLOSURE**

Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of Texas Government Code ("Public Information Act").