TEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF ORDER ANY EXCEPTIONS THERETO MUST BE IN WRITING

The following are the terms and conditions for

West Texas A&M University hereafter referred to as WTAM.

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1. **VENDOR REQUIREMENTS**
   1. Vendors must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
   2. Pricing must be quoted on a “per unit” basis, extended as indicated. Any trade discounts included must be itemized and deducted from extended prices. Unit Prices shall govern in the event of extension errors. Vendor guarantees product or service offered will meet or exceed specifications included.
   3. Purchases should be “F.O.B. destination, freight prepaid and allowed”. However, if vendor quoted freight otherwise, then face of order should show exact delivery cost and who bears cost if not included in unit price.
   4. Prices are firm for within 90 days of the offer. Cash discounts were not considered in determining the best value. All cash discounts will be taken if earned.
   5. Purchases made for the Agency use are exempt from the State Sales tax and Federal Excise tax. Excise Tax Exemption Certificate will be furnished by the Agency upon request.
   6. The Agency reserves the right to accept or reject all or any part of any offer, waive minor technicalities and issue the purchase order to the vendor that best serves the interests of the State.
   7. Consistent and continued tie offers could cause rejection of offers by the Agency and/or investigation for antitrust violations.
2. **SPECIFICATIONS**
   1. Any catalogue, brand name or manufacturer’s reference used is descriptive only (not restrictive), and is used to indicate type and quality desired. Therefore, offers of brands of like nature and quality were considered unless otherwise specified. Vendor will be required to furnish brand names, numbers, etc., as specified on the purchase order unless noted otherwise at time of offer.
   2. All items shall be new and unused, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated.
   3. All electrical items must meet all applicable standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
   4. The Agency will not be bound by any oral statement or representation contrary to the terms and conditions of this purchase.
   5. Manufacturer’s standard warranty shall apply unless otherwise provided, in writing, to WTAMU State University
3. **DELIVERY** 
   1. Order delivery time as shown on the face of the purchase order reflects the number of days required to place material in receiving agency’s designated location under normal conditions. Failure of vendor to state delivery time obligates supplier to complete delivery in 14 calendar days.
   2. If delay is foreseen, supplier shall give written notice to the WTAMU. WTAMU has the right to extend delivery date if reasons appear valid. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the WTAMU to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting supplier.
   3. No substitutions or cancellation permitted without written approval of the WTAMU Purchasing Department.
   4. Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from the Agency.
4. INSPECTION AND TESTS  
   All goods will be subject to inspection and test by WTAMU upon arrival and/or authorized personnel shall have access to any supplier’s place of business for the purpose of inspecting merchandise. Tests, if required, may be performed on 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 cost of the testing shall be borne by the supplier. Goods which have been delivered and rejected in whole or in part may, at WTAMU’s option, be returned to the supplier or held for disposition at supplier’s risk and expense. Latent defects may result in revocation of acceptance.
5. AWARD OF CONTRACT  
   A response to an Invitation for Bid is an offer to contract with the WTAMU based upon the terms, conditions and specifications contained herein. Offers do not become contracts until they are accepted and an authorized purchase order is issued. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Education Code, Title 3, Chapter 51, Section 51.9335, shall also be considered in making an award when specified. Any legal actions must be filed in Erath County, TX.
6. PAYMENT  
   Supplier shall submit one copy of an itemized invoice showing WTAMU’s purchase order number. WTAMU will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. All payments shall be made in accordance with Government Code Title 10, Subtitle F, Chapter 2251: Payment for Goods and Services. Failure to comply with explicit payment instructions will delay payment.
7. PATENTS OR COPYRIGHTS  
   The supplier agrees to protect WTAMU from claims involving infringement of patents or copyrights.
8. SUPPLIER ASSIGNMENTS  
   Supplier hereby assigns to WTAMU any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
9. VENDOR AFFIRMATION  
   By accepting this order, the vendor hereby certifies that any false statement is a material breach of contract and shall void the submitted quote or any resulting contracts, and the vendor shall be removed from all bid lists. By signature hereon affixed, the vendor certifies that:
   1. The vendor 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 order.
   2. Neither the vendor nor the firm, corporation, partnership or institution represented by the vendor, or anyone acting for such firm, corporation, partnership or institution, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communication directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
   3. Pursuant to Section 2155.004 Government Code, the bidder has not received compensation for participation in the preparation of the order.
   4. Pursuant to Section 231.006(d), Family Code, re: child support, the vendor certifies that the individual or business entity named in this order 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.
   5. Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this order or contract 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.
   6. The vendor 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 or performance of this purchase order.
   7. Vendor certifies that they are in compliance with section 669.003of the Government Code, relating to contracting with executive head of a State Agency. If section 669.003 applies, vendor will complete the following information and return to WTAMU State University before fulfilling order:

Name of Former Executive: ­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of State Agency: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position with Bidder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Employment with Bidder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Vendor agrees to comply with Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.
  2. Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
  3. Vendor 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. Vendor 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. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.
  4. The Texas A&M University System Members are federally mandated to adhere to the directions provided in the President’s Executive Order (EO) 13224). Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross referencing respondents/vendors with the Federal General Services Administration’s Excluded Parties List System which is inclusive of the United States Treasury’s Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

1. NOTE TO VENDOR:
   1. Any terms and conditions attached to a quote will not be considered unless the vendor specifically refers to them in the quote.   
      **WARNING**: Such terms and conditions may result in disqualification of the quote, e.g. quotes with the laws of a State other than Texas, requirements for prepayment, limitations on remedies.
2. PUBLIC INFORMATION ACT
   1. Vendor acknowledges that WATMU is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
   2. Upon WATMU’s written request, Vendor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to WTAMU State University in a non-proprietary format acceptable to WTAMU.  As used in this provision, “public information” has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which WTAMU has a right of access.
   3. Vendor acknowledges that WATMU is required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
3. TEXAS FAMILY CODE SECTION 231.006   
   Ineligibility to Receive State Grants or Loans, or Receive Bids or Payments on State Contracts.
   1. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:
      1. receive payments from state funds under a contract to provide property, materials, or services; or
      2. receive a state-funded grant or loan.
   2. A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible until:
      1. (1) all arrearages have been paid; or
      2. (2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.
   3. Pursuant to Section 231.006 (c), Family Code, quote should include name and Social Security number of each person with at least 25% ownership of the business entity submitting the quote. Vendors that have pre-registered this information on the TPASS Centralized Master Bidders List have satisfied this requirement. If not pre-registered, attach name & Social Security number for each person. Otherwise this information must be provided prior to contract award.
   4. “Pursuant to Section 231.006, Family Code, re: child support, the vendor certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.”
   5. If a State Agency determines that an individual or business entity holding a state contract is ineligible to receive payment under Section (a) the contract may be terminated.
   6. If the certificate required under Subsection (d) is shown to be false, the vendor is liable to the State for attorney’s fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract. Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.   
      Amended by Acts 1995, 74th Leg., ch. 751, Sec. 82, eff. Sept. 1, 1995.
4. 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 WTAMU, and the vendor to attempt to resolve any claim for breach of contract made by vendor:
   1. Vendor’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, vendor shall submit written notice, as required by subchapter B, to the designated individual assigned by WTAMU. Said notice shall also be given to all other representatives of WTAMU and vendor otherwise entitled to notice under the parties’ contact. Compliance by vendor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code.
   2. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is vendor’s sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by WTAMU if the parties are unable to resolve their disputes under subparagraph (a) of this paragraph.
   3. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Ch. 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by WTAMU nor any conduct of any representative of WTAMU thereafter shall be considered a waiver of sovereign immunity to suit.
      1. The submission, processing, and resolution of vendor’s claim is governed by the published rules as 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.
      2. Neither the occurrence of an event not the pendency of a claim constitutes grounds for the suspension of the performance by vendor, in whole or in part.
      3. The designated individual responsible on behalf of WTAMU for examining any claim or counterclaim and conducting any negotiations related thereto, as required under 2260.052 of the Texas Government Code shall be Mr. Tye V. Minckler.
5. NON-APPROPRIATON OF FUNDS  
   Funds are contingent on the availability of appropriations by WTAMU and the Texas Legislature. If WTAMU or The Texas Legislature fails to continue funding for the payments due under an order referencing this contract, the order will terminate as the date that the funding expires, and WTAMU or State will have no further obligation to make any payments.
6. INDEPENDENT VENDOR STATUS  
   Seller agrees that Seller and Seller's employees and agents have no employer-employee relationship with University. University shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will University furnish any medical or retirement benefits or any paid vacation or sick leave.
7. **DISCRIMINATION**  
   **Vendor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**