

TERMS AND CONDITIONS OF BID

1. BID REQUIREMENTS:

- 1.1 Submit bids on this Invitation Form. Each bids shall be placed in a separate envelope and properly identified with Bid Invitation No. and Opening Date. Bids must be time-stamped at the University Purchasing Office, 2200 Comal Street, Austin, TX 78722 on or before opening date and time shown on this Invitation Form. Late bids will not be considered.
- 1.2 Bids should be quoted F.O.B. Destination. If otherwise, bidder will show exact cost to deliver. Bid unit price on the quantity specified, extend and show total. In case of errors, unit prices shall govern. Bid prices will be considered firm for acceptance within 30 days after the bid opening date unless otherwise specified. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Bidder will list and deduct all trade discounts, educational discounts, and other discounts, not based on early payment from the bidder's prices quoted.
- 1.3 University is exempt from State Sales Tax and Federal Excise Tax. Do not include in bid. Tax Exemption Certificate furnished upon request.
- 1.4 Bids must give full name and address of bidder.
- 1.5 University reserves the right to accept or reject all or part of any bid, waive any formalities or technical inconsistencies, delete any requirement or specification from this Invitation, or terminate this solicitation when deemed to be in University's best interest.
- 1.6 Facsimile responses to this Invitation must be submitted on the Invitation Form. Telephone bids are not acceptable, and email responses are not acceptable in response to this Invitation UNLESS BID OPENING DATE SPECIFIES "RETURN MAIL". Email responses to bids NOT MARKED WITH A BID OPENING DATE OF "RETURN MAIL" WILL BE DELETED WITHOUT REVIEW AND WILL NOT BE CONSIDERED AS VALID RESPONSES. CAUTION: University offers facsimile service as a convenience only. University shall not be responsible for bids received late, or that are illegible, incomplete, or otherwise non responsive due to failure of electronic equipment or operator error. Confirmation of facsimile bids is not required.
- 1.7 Bidder hereby assigns to University any and all claims for overcharges associated with any resulting contract arising under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq. and/or the State of Texas, *Tex. Bus. & Comm. Code Ann.* Sec. 15.01, et seq.

- 1.8 The Vendor ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. If the Vendor ID number is not known, enter Bidder's Federal Employer's Identification Number, or Social Security Number if a sole owner. Bidder will provide the name and Social Security Number for each person having at least 25% ownership interest in Bidder. This disclosure is mandatory pursuant to Section 231.006, *Texas Family Code*, and will be used for the purpose of determining whether an owner of Bidder with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the Texas Public Information Act, Chapter 552, *Texas Government Code*, and other applicable laws.
- 1.9 In case of tie bids, any award will be made pursuant to Rule § 20.36 (b)(3) in Title 34 of the *Texas Administrative Code*.
- 1.10 Bidder shall not assign any resulting contract or agreement resulting from this Invitation to Bid without prior written approval from the University's Purchasing Office.

2. SPECIFICATIONS:

- 2.1 Unless specifically stated otherwise, any catalog, brand name or manufacturer's reference used in this Invitation is descriptive (not restrictive), and is used to indicate type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid MUST show manufacturer brand or trade name and description of product offered. Illustrations and complete descriptions of product offered should be made part of the bid. If bidder does not identify exceptions to the specifications shown in this Invitation, bidder will be required to furnish brand names, numbers, etc., as shown in the Invitation.
- 2.2 All items bid shall be new, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in this Invitation. Verbal agreements to the contrary will not be recognized.

3. DELIVERY:

- 3.1 Bid should show the number of days required to deliver items to University's designated location under normal conditions. Unrealistically short or long delivery promises may cause bid to be disregarded. Failure to state delivery time obligates bidder to complete delivery in 14 calendar days.
- 3.2 The *Texas Health and Safety Code*, Chapter 502, Texas Hazard Communication Act requires chemical manufacturers and distributors to provide Material Safety DataSheets (MSDSs) for hazardous materials sold. Products covered by this Act

must be accompanied by a MSDS and such products must be labeled in compliance with the law. For any product not covered under the Act, a statement of exemption must be provided.

4. BIDDER AFFIRMATION:

By signature hereon, Bidder makes the following affirmations, certifications, representations, warranties, covenants and agreements:

- 4.1 Bidder affirms that it has not given or offered to give, and does not intend 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. Failure to sign the bid may, and signing it with a false statement shall, void the submitted bid or any resulting contract and bidder will be removed from all bid lists.
- 4.2 Bidder certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection, exists between the owner of any Bidder that is a sole proprietorship, the officers or directors of any Bidder that is a corporation, the partners of any Bidder that is a partnership, the joint venturers of any Bidder that is a joint venture or the members or managers of any Bidder that is a limited liability corporation, on one hand, and an employee of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing, and (ii) Bidder has not been an employee of University or any component institution of The University of Texas System within the immediate twelve (12) months prior to the Bid Opening Date. All disclosures by Bidder in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Bidder.
- 4.3 Bidder certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Texas Tax Code* or that Bidder is exempt from the payment of those taxes, or that Bidder is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. Bidder acknowledges that a false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.
- 4.4 Bidder certifies that neither the Bidder nor any firm, corporation, partnership or institution represented by Bidder, or anyone acting for any such entity has (a) violated the antitrust laws of this State, (codified in Section 15.01 et seq., *Texas Business and Commerce Code*), or the federal antitrust laws, or (b) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

- 4.5 Bidder, in accordance with Section 2155.004, *Texas Government Code*, certifies that it has not received compensation for its participation in the preparation of the requirements or specifications for this Invitation to Bid. In addition, Bidder certifies that an award of a contract or agreement to Bidder will not violate Section 2155.006, *Texas Government Code*, prohibiting University from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005.
- 4.6 Bidder, pursuant to Section 2155.004 and 2155.006, *Texas Government Code*, certifies that Bidder is not ineligible to receive the award of or payments under any resulting contract or agreement and acknowledges that such a contract or agreement may be terminated and payment withheld if these certifications are inaccurate.
- 4.7 Bidder agrees that, pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, any payments owing to Bidder under any contract or agreement resulting from this Invitation to Bid may be applied directly to any debt or delinquency that Bidder owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 4.8 **BIDDER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF BIDDER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BIDDER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS INVITATION TO BID.**
- 4.9 Bidder, pursuant to Section 669.003 of the *Texas Government Code*, represents, certifies and warrants that is (i) is not the executive head of the University, (ii) was not the executive head of the University at any time during the four years before the Bid Opening Date, and (iii) does not employ (or anticipate employing) either (a) the current executive head of the University or (b) any person who was the executive head of the University during the four years before the Bid Opening

Date. Provided, however, in the event that the Bidder cannot make the above representation, certification and warranty, then Bidder must include in its bid a statement of why Bidder is unable to do so as well as all of the following information in order for their bid to be evaluated by the University for compliance with Section 669.03:

A. Bidder must identify the names of the current or any former executive heads of the University (1) with whom Bidder proposes the University enter into a contract or agreement or (2) who are employed by Bidder (or whom Bidder anticipates employing.)

B. Bidder must identify the following information for each individual identified in item A above who was formerly an executive head of the University:

- (1) the individual's date of separation from the University;
- (2) the position that the individual holds (or will hold) with Bidder; and
- (3) the date(s) during which the individual has been employed by Bidder, or dates on which the individual is to start employment with Bidder.

Bidder's failure to provide such a statement and all of the above information in its bid constitutes Bidder's agreement to the representation, certification, and warranty set forth at the start of this Section 4.9. The University may require Bidder to provide additional information and assistance in order to comply with Section 669.003; Bidder acknowledges that the University may reject Bidder's bid in the event that Bidder does not provide such additional information and assistance. Bidder acknowledges that Section 669.003 may prevent Bidder from being awarded any contract or agreement resulting from this Invitation to Bid.

4.10 Bidder covenants and agrees that if it performs services under any contract or agreement resulting from this Invitation to Bid, Bidder will comply with Section 2155.4441, *Texas Government Code* in performing its duties and obligations under that contract or agreement by purchasing products and materials produced in the State of Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

4.11 A Bidder that is a corporation or a limited liability company warrants, represents, covenants and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and delivery its bid and any contract or agreement resulting from this Invitation to Bid, and the individuals executing Bidder's bid and any such contract or agreement on behalf of Bidder have been duly authorized to act for and bind Bidder.

4.12 Bidder, pursuant to Section 231.006, *Texas Family Code*, certifies that it is not ineligible to receive the award of or any payments under any contract or

agreement resulting from this Invitation to Bid and acknowledges that such a contract or agreement may be withheld if this certification is inaccurate.

- 4.13 Bidder certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 4.14 Bidder represents and warrants all products and services offered to University in response to this Invitation to Bid meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code*, and all related regulations in effect or proposed as of the date of this Invitation to Bid.
- 4.15 Bidder affirms that it has not given or offered to give, nor does Bidder intend 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 submitted bid.

5. TEXAS BIDDER AFFIRMATION CLAUSE:

By signing this bid, Bidder certifies that if a Texas address is shown as the Bidder's address, Bidder qualifies as a Texas Bidder, as defined in Section 2155.444 (c) (2) of the *Texas Government Code* and in Title 34, Rule §20.32 (68) of the *Texas Administrative Code*.

6. ACCESS BY INDIVIDUALS WITH DISABILITIES.

Bidder represents and warrants under both this bid and any contract or agreement between Bidder and the University that results from this Invitation to Bid (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that Bidder provides or offers to provide to the University under this bid or any resulting contract or agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent successful Bidder becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Bidder represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Bidder is unable to do so, then the University may reject Bidder’s bid and/or terminate any contract or agreement between Bidder and the University resulting from this Invitation to Bid and Bidder will refund to the University all amounts the University has paid under any contract or agreement resulting from this Invitation to Bid within thirty (30) days after the termination date.

7. GENERAL:

- 7.1 Inquiries pertaining to this Invitation to Bid must identify the Bid Invitation No. and Opening Date.
- 7.2 This Invitation to Bid and any resulting contract or agreement shall be governed by the laws of the State of Texas.
- 7.3 NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, TEXAS GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, TEXAS GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT ANY INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.
8. NOTICES: Except as provided in this Section 8, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given by Bidder to the University under any of the provisions of this Invitation to Bid or any resulting contract or agreement will be in writing and will be deemed to have been duly given or served when delivered by hand delivery or when deposited in the US mail by registered or certified mail, return receipt requested, postage prepaid, and addressed to the University's Purchasing Office as set forth in the Invitation to Bid.
9. BREACH OF CONTRACT CLAIMS: To the extent Chapter 2260, *Texas Government Code*, is applicable to any contract or agreement resulting from this Invitation to Bid and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Bidder to attempt to resolve any claim for breach of contract made by Bidder that cannot be resolved in the ordinary course of business. The chief business officer of University or his or her delegate will examine Bidder's claim and any counterclaim and negotiate with Bidder in an effort to resolve such claims. The parties specifically agree that (i) neither the execution by University of any contract or agreement resulting from this Invitation to Bid nor any other conduct, action or inaction of any representative of University relating to such a contract or agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in courts.

REVISED 12/07