



**ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF BID AND
ANY SUBSEQUENT AWARD EXCEPTIONS MUST BE MADE IN WRITING**

1. BIDDING REQUIREMENTS

- 1.1 BIDDER 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 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. BIDDER guarantees product or service offered will meet or exceed specifications included as part of this Invitation for Bid (IFB).
- 1.3 Bids should be submitted electronically via the AggieBuy e-procurement platform, or as otherwise instructed. If allowed, mailed bids should be placed in a separate envelope, completely and properly identified. Bids must be received by the TEXAS A&M DEPARTMENT OF PROCUREMENT SERVICES on or before the hour and date specified for the bid opening.
- 1.4 Bids sent via U.S. Postal Service, must use the address indicated in the Invitation for Bid. For delivery service or hand deliveries requiring a street address, use 330 Agronomy Road, College Station, TX 77843.
- 1.5 Late bids will not be considered under any circumstances.
- 1.6 Bids should be quoted "F.O.B. destination, freight prepaid and allowed" or "Delivered Duty Paid." If quoting freight otherwise, show exact delivery cost and who bears cost if not included in unit price.
- 1.7 Bid prices are requested to be firm for a minimum of 30 days after bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discount will not be considered in determining the low bid. All cash discounts will be taken if earned.
- 1.8 As a BIDDER responding to this invitation for bid, upon submission of your response, regardless of the format of your submission, you and the entity you represent are agreeing to the terms and conditions presented herein.
- 1.9 Bid may not be altered or amended after opening time. Any alterations made before opening time must be initiated by BIDDER or authorized agent of BIDDER. No bid may be withdrawn after opening time without approval by the TEXAS A&M DEPARTMENT OF PROCUREMENT SERVICES.
- 1.10 Purchases made for use by TEXAS A&M are exempt from State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificate will be furnished by TEXAS A&M upon request.
- 1.11 TEXAS A&M 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 State.
- 1.12 Preferences may be given to bids pursuant to Texas Government Code § 2155.441-452 (check any that are applicable):
- Products of persons with mental or physical disabilities
 - Energy efficient products
 - Rubberized asphalt paving material
 - Texas and United States products and Texas services (Preference given to Texas BIDDER and Service-Disable Veteran)
 - Recycled, remanufactured, or environmentally sensitive products
 - Paper containing recycled fibers
 - Recycled motor oil and lubricants
 - Products and services from economically depressed or blighted areas
 - Products produced at facilities located on formerly contaminated property

Vendors that meet or exceed air quality standards

Contractors providing goods of higher nutritional value

- 1.13 The telephone number for FAX submission of bids is 979-845-3800. TEXAS A&M shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

- 1.14 Inquiries pertaining to IFBs must include the IFB number and opening date.

- 2. SPECIFICATIONS.** Any catalogue, brand name or manufacturer's reference used in the Invitation for Bid is descriptive only, not restrictive, and is used to indicate type and quality desired. Bids on brands of like nature and quality will be considered unless otherwise specified. If bidding on other than reference, bid should show manufacturer, brand or trade name, and other description of the product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. If BIDDER takes an exception to specifications or reference data in his or her bid, BIDDER will be required to furnish brand names, numbers, etc., as specified in the Invitation for Bid (IFB).

- 2.1 All items shall be new and unused, including containers suitable for shipment and storage, unless otherwise indicated in IFB. Oral agreements to the contrary will not be recognized.

- 2.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

- 2.3 Samples, when requested, must be furnished free of expense to TEXAS A&M. If not destroyed in examination, they will be returned to the BIDDER, upon request, at BIDDER's expense. Each sample should be marked with BIDDER's name and address, and TEXAS A&M bid number. Do not enclose in or attach bid to sample.

- 2.4 TEXAS A&M will not be bound by any oral statement or representation contrary to the written specifications of this IFB.

- 2.5 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

- 3. TIE BIDS.** If two or more responses receive the same score after evaluation, the award will be based on the following preferences. Priority of the claimed preference shall be given in the sequence listed below (check any that apply):

- Texas Agricultural Product
- Texas Product
- Texas BIDDER and Service-Disable Veteran
- Texas BIDDER
- U.S. Product

If pricing and preferences are equal, award will be determined by tossing a coin with two witnesses to oversee the tie-breaking activity.

Consistent and continued tie bidding could cause rejection of bids by TEXAS A&M and/or investigation for antitrust violations.

4. DELIVERY

- 4.1 Bid should show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates BIDDER to complete delivery in 14 calendar days. Unrealistically short or long delivery promises may cause bid to be disregarded.

- 4.2 If delay is foreseen, BIDDER shall give written notice to TEXAS A&M. TEXAS A&M has the right to extend delivery date for valid reasons. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes TEXAS A&M to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting BIDDER.

4.3 No substitutions or cancellation permitted without written approval of the TEXAS A&M DEPARTMENT OF PROCUREMENT SERVICES.

4.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from TEXAS A&M.

5. **INSPECTION AND TESTS.** All goods will be subject to inspection and test by TEXAS A&M to the extent practicable at all times and places. Authorized TEXAS A&M personnel shall have access to any BIDDER'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. 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 BIDDER. Goods which have been delivered and rejected in whole or in part may, at TEXAS A&M's option, be returned to the BIDDER or held for disposition at BIDDER'S risk and expense. Latent defects may result in revocation of acceptance.

6. **BIDDER AFFIRMATION.** Signing this bid 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 signature hereon affixed, the BIDDER hereby certifies that:

6.1 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.

6.2 Franchise Tax Certification. If BIDDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then BIDDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that BIDDER is exempt from the payment of franchise (margin) taxes.

6.3 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, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

6.4 TEXAS A&M may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

6.5 The BIDDER 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, from any acts or omissions of BIDDER or any agent, employee, subcontractor, or supplier of BIDDER in the execution or performance of this purchase order.

6.6 Pursuant to Sections 2107.008 and 2252.903 Texas Government Code, BIDDER 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.

6.7 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: _____

6.8 BIDDER agrees to comply with Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.

6.9 BIDDER 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. BIDDER 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. BIDDER will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through BIDDER and the requirement to cooperate is included in any subcontract awards.

7. **CONFLICTING TERMS & CONDITIONS.** Any terms and conditions attached to a bid will not be considered unless the BIDDER specifically refers to them on the front of this 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, REQUIREMENT'S FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC.)

8. **AWARD OF CONTRACT.** A response to an IFB is an offer to contract with TEXAS A&M based upon the terms, conditions and specifications contained in the IFB. Bids 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.

9. **PAYMENT.** All invoices shall be itemized, showing order number and agency purchase order number. TEXAS A&M 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.

10. **PATENTS OR COPYRIGHTS.** The BIDDER agrees to protect TEXAS A&M from claims involving infringement of patents or copyrights.

11. **BIDDER ASSIGNMENTS.** BIDDER hereby assigns to purchaser 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).

12. **PUBLIC INFORMATION.** BIDDER acknowledges that TEXAS A&M 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. Upon TEXAS A&M's written request, BIDDER will promptly provide specified contracting information exchanged or created under any resultant agreement for or on behalf of TEXAS A&M. BIDDER acknowledges that TEXAS A&M may be 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. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and BIDDER agrees that this Agreement can be terminated if BIDDER knowingly or intentionally fails to comply with a requirement of that subchapter.

13. **DELINQUENT CHILD SUPPORT OBLIGATIONS.** 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 receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas*

Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

14. EXPORT CONTROL. BIDDER agrees to comply with all applicable US Export Control laws and regulations to include the Export Administration Regulations (EAR), the International Traffic in Arms (ITAR) and any other applicable US export laws and regulations. As an institution of higher learning, Texas A&M University (TEXAS A&M) typically does not take receipt of export controlled goods, technical data, services or technology (“Materials”) except as may be specifically agreed by TEXAS A&M. BIDDER agrees that it will not provide or make accessible to TEXAS A&M any export controlled Materials without first informing TEXAS A&M of the export-controlled nature of the Materials and obtaining from TEXAS A&M its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to TEXAS A&M. BIDDER agrees to obtain government approval or export license if required from the appropriate US Government agency and to share that information with TEXAS A&M prior to delivery of such Materials. In the event that any purchased item is export controlled under the U.S. Export Control Regulations, BIDDER shall provide TEXAS A&M with the export control classification and failure to do so may result in the cancellation of the respective purchase order or agreement.

15. VENDOR ACCESS. BIDDER hereby acknowledges responsibility to comply with all applicable TEXAS A&M policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by TEXAS A&M.

For purposes of this section concerning Vendor Access, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in Section 51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by TEXAS A&M to be essential to the continued performance of the mission of TEXAS A&M, the unavailability of which would result in consequences to TEXAS A&M.

In the event BIDDER should obtain or be granted access to Confidential and/or Mission Critical Information of TEXAS A&M (“TEXAS A&M Information”), BIDDER will keep and protect TEXAS A&M Information confidential to no less than the same degree of care as required by TEXAS A&M policies, rules and procedures. At the expiration or early termination of this Agreement, BIDDER agrees to return all TEXAS A&M Information or agrees to provide adequate certification that the TEXAS A&M Information has been destroyed. BIDDER, its employees, agents, contractors, and subcontractors shall use the TEXAS A&M Information solely in connection with performance by BIDDER of the services provided to TEXAS A&M pursuant to this Agreement, and for no other purpose. Should BIDDER, its employees, agents, contractors, or subcontractors acquire other TEXAS A&M Information during the course of this Agreement, it shall not be used for BIDDER’s own purposes or divulged to third parties. BIDDER shall comply with all terms and conditions of any TEXAS A&M non-disclosure agreement applicable to this Agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this Agreement and the eligibility for BIDDER to receive any TEXAS A&M Information from TEXAS A&M for a period of not less than five (5) years.

Both parties shall each provide contact information for specific individuals. Should the designated contact for either party need to be changed, the new contact information shall be updated and provided to the respective parties within 24 hours of any staff changes. Should BIDDER have a need to access TEXAS A&M

Information, that request shall be directed to TEXAS A&M’s designated contact. Further, BIDDER is responsible for reporting all security breaches directly to TEXAS A&M. TEXAS A&M’s designated contact for breaches shall be Help Desk Central (helpdesk@tamu.edu; (979) 845-8300). Help Desk Central can be contacted 24/7. Security breach investigation reports shall be provided to the designated contact for TEXAS A&M and TEXAS A&M’s Chief Information Security Officer (ciso@tamu.edu).

16. ACCESS BY INDIVIDUALS WITH DISABILITIES. BIDDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TEXAS A&M under this 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, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent BIDDER becomes aware that the EIRs, or any portion thereof, do not comply then BIDDER represents and warrants that it will, at no cost to TEXAS A&M, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

17. SUSTAINABILITY. TEXAS A&M UNIVERSITY is committed to campus sustainability initiatives. Support of these initiatives necessarily includes the purchase of goods and services that minimize the impact on the environment to the greatest extent possible. TEXAS A&M UNIVERSITY requests BIDDER’s assistance in campus sustainability initiatives by informing in any bid response, or other discussions, of BIDDER’s sustainability practices or environmentally sustainable product offerings. For example, alternative products available from BIDDER which may be recyclable or reusable, end of life (obsolescence) return of equipment to BIDDER, energy-saving devices, return to BIDDER of shipping containers, packaging or like excess materials.

18. DISPUTE RESOLUTION. BIDDER must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code. BIDDER must submit written notice of a claim of breach of contract to the University Contracts Officer, TEXAS A&M UNIVERSITY.

19. FORCE MAJEURE. Neither party will be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. Force Majeure is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a party’s failure or delay in performance due to Force Majeure must be given within a

reasonable time after its occurrence and which notice must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a party's financial inability to perform its obligations shall in no event constitute a Force Majeure.

20. **BIDDER CERTIFICATION REGARDING BOYCOTTING ISRAEL.** Pursuant to *Chapter 2271, Texas Government Code*, BIDDER certifies BIDDER 1) does not currently boycott Israel and 2) will not boycott Israel during the Term of any ensuing purchase order or contract. BIDDER acknowledges its purchase order or contract with TEXAS A&M may be terminated and payment withheld if this certification is inaccurate.
21. **BIDDER CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS.** Pursuant to *Subchapter F, Chapter 2252, Texas Government Code* BIDDER certifies BIDDER is not engaged in business with Sudan, Iran or a foreign terrorist organization. BIDDER acknowledges its purchase order or contract with TEXAS A&M may be terminated and payment withheld if this certification is inaccurate.
22. **PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING.** A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking. A bid or award subject to the requirements of this section must include the following statement: "Under Section 2155.0061, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
23. **NOT ELIGIBLE FOR REHIRE.** BIDDER is responsible to ensure that employees participating in work for any Texas A&M System member have not been designated by the Texas A&M System as Not Eligible for Rehire as defined in System Policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this or any resultant agreement.
24. **GOVERNING LAW.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
25. **VENUE.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TEXAS A&M shall be in Brazos County, Texas.
26. **CONFLICT OF INTEREST.** By executing and/or accepting this Agreement, BIDDER and each person signing on behalf of BIDDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TEXAS A&M UNIVERSITY or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.