

**Administrative Services**

2147-TAMU  
College Station, TX 77843-2147  
Tel. 979-845-4786| Fax. 979-458-1217|agrillifeas.tamu.edu



February 12, 2019

TO BIDDER:

**Transmitted herewith is Invitation For Bid #B960011.** To submit a bid, please complete the Invitation For Bid form and return it to the Texas A&M AgriLife Purchasing Department by the bid opening date and time. Mailed, hand delivered, facsimile (979-458-1217), and emailed ( [bids@ag.tamu.edu](mailto:bids@ag.tamu.edu) ) bids will be accepted if received prior to the bid opening date and time. If submitting a bid through the mail or by hand delivery, please show the bid invitation number and the bid opening date in the lower left hand corner of a sealed envelope.

**Bids must be submitted on the Texas A&M AgriLife Purchasing Department's Invitation for Bid form.** Please read carefully the terms and conditions. **The bid must be signed and dated to be considered.** Please enter your company name, address, and your State of Texas vendor identification number on page 1 of the Invitation for Bid. If the number is unavailable, enter your federal taxpayer identification number or your social security number. Bids will be opened at the time stated on the enclosed form. Bidders and/or their representative may attend the bid opening if desired. Please note: The bid opening will be held at 578 John Kimbrough Blvd. Room #412, College Station, Texas 77843. Paid visitor parking is located in the first row of Lot 97.

After the bids have been evaluated, the vendor receiving a bid award from this solicitation will be issued a purchase order.

**Mailing Address for Bids:**

***Texas A&M AgriLife Purchasing Department  
2147 TAMU  
College Station, TX 77843-2147***

**Physical Address for Bids: (for Fed Ex, UPS, hand delivery, etc.)**

***Texas A&M AgriLife Purchasing Department  
578 John Kimbrough Blvd., Room #419  
College Station, TX 77843***

If you would like additional information concerning our purchasing procedures, please contact:

Chris Chamberlain, CTPM  
Assistant Director of Purchasing  
Texas A&M AgriLife Administrative Services  
Purchasing Department  
979-845-4786 979-458-1217 (fax)  
[cchamberlain@tamu.edu](mailto:cchamberlain@tamu.edu)

# INVITATION FOR BID — RETURN SEALED BIDS TO:

02/11/2019

**BIDDER MUST SIGN BELOW**  
FAILURE TO SIGN WILL DISQUALIFY BID

TEXAS A&M AGRILIFE PURCHASING  
2147 TAMU  
COLLEGE STATION, TX 77843-2147  
PHONE: 979-847-5801  
FAX: 979-458-1217  
EMAIL: BIDS@AG.TAMU.EDU

Page 1

\_\_\_\_\_  
AUTHORIZED SIGNATURE

OPENING DATE: 03/01/2019 at 3:00PM (CST)

\_\_\_\_\_  
PRINT OR TYPE NAME

BID NO: B960011

BUYER: CAC

\_\_\_\_\_  
TITLE

DATE

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY

STATE

ZIP

\_\_\_\_\_  
PHONE

FAX

\_\_\_\_\_  
VENDOR ID NUMBER (SEE SECTION 1.8 OF TERMS & CONDITIONS)

\_\_\_\_\_  
DUNS NUMBER (IF AVAILABLE)

**BY SIGNING, VENDOR AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS WHICH ARE EITHER ATTACHED HERETO, MAY BE FAXED OR EMAILED UPON REQUEST, OR ARE AVAILABLE AT <http://agrillifeas.tamu.edu/library/pdf/forms/terms-conditions-bid.pdf>.**

BY SIGNING, BIDDER CERTIFIES THAT IF A TEXAS ADDRESS IS SHOWN AS THE ADDRESS OF THE BIDDER, BIDDER QUALIFIES AS A TEXAS RESIDENT BIDDER AS DEFINED IN 34 TEXAS ADMINISTRATIVE CODE, RULE 20.32(68).

BID TO BE "F.O.B. DESTINATION FREIGHT PREPAID AND ALLOWED" UNLESS OTHERWISE SPECIFIED BELOW.

DESTINATION OF GOODS:

MULTIPLE SITES IN  
SHELBY AND NACOGDOCHES  
COUNTIES

Item	Description	Quantity	UOM	Unit Price	Ext Price
1	<p>TEXAS A&amp;M AGRILIFE RESEARCH IS CURRENTLY ACCEPTING BIDS FOR THE FOLLOWING:</p> <p>BIDDER SHALL PROVIDE ALL LABOR, MATERIALS, EQUIPMENT, AND SERVICES NECESSARY TO INSTALL EIGHT (8) ON-SITE SEWAGE FACILITIES (OSSF) (SEPTIC SYSTEMS).</p> <p>SPECIFICATIONS:</p> <ul style="list-style-type: none"> <li>- SEE ATTACHED OSSF SITE PLANS FOR THE DESIGN/SPECIFICATIONS OF EACH SYSTEM.</li> <li>- BIDDERS MUST BE LICENSED IN THE RESPECTIVE COUNTY WHERE THE INSTALLATION WILL BE PERFORMED AND SHALL INCLUDE A COPY OF THEIR LICENSE WITH THEIR BID.</li> <li>- INSTALLATION AT EACH LOCATION MUST BE COMPLETED ON OR BEFORE OCTOBER 31, 2019.</li> <li>- EACH SYSTEM SHALL INCLUDE A TWO-YEAR WARRANTY.</li> <li>- CONTACT KEN AWTREY (PINEY WOODS RC&amp;D) AT (936)568-0414 OR (936)645-6685 TO VISIT ANY OF THE INSTALLATION LOCATIONS. TO RESPECT EACH HOMEOWNER'S PRIVACY, CONTRACTORS SHALL NOT VISIT ANY INSTALLATION SITE ON THEIR OWN.</li> <li>- BIDDERS CAN BID ON ONE, ALL, OR ANY COMBINATION OF THE SYSTEMS INCLUDED IN THIS BID. HOWEVER, BIDDERS MUST INDICATE THEIR ABILITY TO COMPLETE THE WORK BY THE INSTALLATION DEADLINE (EX. IF YOU BID ON 6 SYSTEMS BUT CAN ONLY INSTALL 3 BY THE DEADLINE, PLEASE INDICATE THAT IN YOUR BID RESPONSE.)</li> <li>- ANY AWARD/AWARDS WILL BE MADE BASED ON THE</li> </ul>				

If claiming preference under 34 Texas Administrative Code, Rule 20.38, please complete section 1.13 of the terms and conditions and submit with signed bid response.

If claiming to be a TPASS certified Historically Underutilized Business (HUB), please specify:  
 BLK  HSP  W/O  A/P  AI



PURCHASING AGENT FOR TEXAS A&M AGRILIFE

**INVITATION FOR BID – RETURN SEALED BIDS TO:**  
**TEXAS A&M AGRILIFE PURCHASING**  
**2147 TAMU**  
**COLLEGE STATION, TX 77843-2147**  
**PHONE: 979-847-5801**  
**FAX: 979-458-1217**  
**EMAIL: BIDS@AG.TAMU.EDU**

BID OPENING: 03/01/2019  
 BID NO: B960011  
 BUYER: CAC  
 VENDOR:

Item	Description	Quantity	UOM	Unit Price	Ext Price
	BEST INTEREST OF THE AGENCY, AS SPECIFIED IN SECTION 1.11 OF THE BID TERMS AND CONDITIONS.				
1	Carrie Lathan residence, located in Nacogdoches County. Project No. 2002798.	1	JOB		
2	Venson James for Scottie Yarbrough residence, located in Nacogdoches County. Project No. 2002784.	1	JOB		
3	Ruth McDaniel residence, located in Nacogdoches County. Project No. 2002799.	1	JOB		
4	Patrick Hall residence, located in Nacogdoches County.	1	JOB		
5	Ralph Soto residence, located in Shelby County. Project No. 2002785.	1	JOB		
6	Roger Owens residence, located in Nacogdoches County. Project No. 2002800.	1	JOB		
7	Daniel & Ashley Hall residence, located in Nacogdoches County. Project No. 2002786.	1	JOB		
8	Amy Allen residence, located in Nacogdoches County. Project No. 2002801.	1	JOB		

IN THE SPACE PROVIDED HERE, PLEASE INDICATE WHICH JOBS YOU WOULD BE ABLE TO COMPLETE PRIOR TO THE INSTALLATION DEADLINE DATE OF OCTOBER 31, 2019 (EX: IF YOU BID ON 6 SYSTEMS BUT CAN ONLY INSTALL 3 BY THE DEADLINE, INDICATE WHICH 3 HERE. IF YOU CAN COMPLETE ANY 3 OF THE 6 YOU BID ON BY THE DEADLINE, PLEASE INDICATE THAT HERE.):

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**ATTACHMENT A  
INVITATION FOR BID #B960011**

Terms and Conditions

The Bidder agrees to comply with the Agency's terms and conditions. These supersede any other terms and conditions issued and/or referenced by the Bidder. Having the status of a state agency, Texas A&M AgriLife must abide by the laws of the State of Texas. Any contract resulting from this bid solicitation shall be construed and governed by the laws of the State of Texas.

Terms of Payment

Net 30 days upon successful installation by the vendor and acceptance by the Agency, or net 30 days upon receipt of correct invoice, whichever is later.

Discounts

Provide any and all applicable discounts on the items in this Invitation For Bid.

Manuals

All manuals shall be delivered upon installation of each system and shall be in English.

Insurance

The Bidder is required to carry insurance naming the Texas A&M University System Board of Regents for and on behalf of the Texas A&M University System, the Texas A&M University System, and Texas A&M AgriLife as additional insureds for the duration of the contract. Renewed, revised, or new certificates of insurance shall be sent to the Texas A&M AgriLife Purchasing Office via fax to 979-458-1217. Not carrying the required insurance could lead to cancellation of this agreement by the Agency.

Public Information

- a) Bidder acknowledges that the Agency 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.
- b) Upon the Agency's written request, Bidder 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 the Agency in a non-proprietary format acceptable to the Agency. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which the Agency has a right of access.
- c) Bidder acknowledges that the Agency 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.

Conflict of Interest

By executing any resulting agreement, the Bidder and each person signing on behalf of the Bidder certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the Texas A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by

the A&M System, has direct or indirect financial interest in the award of any resulting agreement, or in the services to which any resulting agreement relates, or in any of the profits, real or potential, thereof.

Prohibition on Contracts with Companies Boycotting Israel

By executing any resulting agreement, the Bidder certifies it does not and will not, during the performance of any resulting contract, boycott Israel. The Bidder acknowledges any resulting agreement may be terminated if this certification is inaccurate.

Certification Regarding Business with Certain Countries and Organizations

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Bidder certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. The Bidder acknowledges any resulting agreement may be terminated if this certification is inaccurate.

Questions:

If discrepancies, ambiguities, or omissions are found in the bidding documents, or if further information or interpretation is desired, please contact the following in writing:

Chris Chamberlain

Fax, 979/458-1217

E-mail, [cchamberlain@tamu.edu](mailto:cchamberlain@tamu.edu)

**All questions must be received on or before February 22, 2019, at 3:00 pm CST.** When deemed appropriate by the Agency, questions will be answered by bid addendum. All provisions and requirements of such addenda will supersede or modify affected portion of the bidding documents. All addenda will be incorporated in and bound with the contract documents. No other explanations or interpretations will be considered binding.

Best Value Criteria

Bidders please note: Texas A&M AgriLife reserves the right to accept or reject any or all bids, to waive informalities and technicalities, to accept the offer considered most advantageous and award the bid based on best value criteria. In determining what is the best value to the Agency, the Agency shall consider any or all of the following:

- 1) purchase price
- 2) the reputation of the vendor and the vendor's goods or services.
- 3) the quality of the vendor's goods or services.
- 4) the extent to which the goods or services meet the agency's needs.
- 5) the vendor's past relationship with the agency.
- 6) the total long-term cost to the agency in acquiring the vendor's good or services.
- 7) the length and coverage of the vendor's warranty.
- 8) the delivery time.
- 9) any other relevant factor that a private business entity might consider in selecting a vendor.

## INSURANCE REQUIREMENTS FOR VENDOR CONTRACTS

### **TEXAS A&M AGRILIFE RESEARCH, TEXAS A&M AGRILIFE EXTENSION SERVICE, AND TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY (HEREINAFTER REFERRED TO AS TEXAS A&M AGRILIFE)**

The vendor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Texas A&M AgriLife. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the vendor under this Agreement. The vendor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The vendor is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Texas A&M AgriLife at least ten days before the effective date of the cancellation.

#### **Insurance:**

#### **Coverage**

#### **Limit**

#### **A. Worker's Compensation**

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for [Member]. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

#### **B. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

#### **C. Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures the vendor or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

**D. The vendor will deliver to Texas A&M AgriLife:**

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by the vendor under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

**All insurance policies**, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name **The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System, and Texas A&M AgriLife as Additional Insureds** up to the actual liability limits of the policies maintained by the vendor. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M AgriLife. No policy will be canceled without unconditional written notice to Texas A&M AgriLife at least ten days before the effective date of the cancellation.

**All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to Texas A&M AgriLife ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by Texas A&M AgriLife prior to the performance of any services by the vendor under this Agreement. The vendor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Texas A&M AgriLife in writing.

Additional Insureds shall be shown as follows:

**The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System, and Texas A&M AgriLife**

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

The following are the terms and conditions for Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service, and Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL), hereafter referred to as the Agency.

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**1. BIDDING REQUIREMENTS**

- 1.1 Bidders 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). If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.3 Bids should be submitted on this form. Each bid that is mailed should be placed in a separate envelope completely and properly identified. Bidder should show opening date and bid invitation number on the fax coversheet, subject line of email, or the lower left hand corner of the sealed envelope. Please show return address of company. Bids must be received by the Agency on or before the hour and date specified for the bid opening.
- 1.4 When sending bids via the U.S. Postal Service, use the address on the front of this IFB. When using a delivery service or hand delivering, which requires a street address, address is Administrative Services Building, 578 John Kimbrough Blvd., Room #419, Texas A&M University, College Station, TX 77843-2147.
- 1.5 Late or unsigned bids will not be considered under any circumstances.
- 1.6 Bids should be quoted "F.O.B. destination, freight prepaid and allowed". 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 the Agency's acceptance within 30 days of the bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discount will not be considered in determining an award. All cash discounts will be taken if earned.
- 1.8 Bids should give Vendor ID Number, full name and address of bidder. Failure to sign bid will disqualify it. Person signing bid should show title or authority to bind his or her firm in a contract. Firm name should appear on each page of a bid, in the block provided in the upper right hand corner. The Vendor ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this number in the spaces provided on the front side (upper left) of the IFB. If this number is not known, complete the following: 1. Enter your Federal Employer Identification Number. 2. Sole owner should also enter Social Security Number.
- 1.9 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initialed by bidder or authorized agent of bidder. No bid can be withdrawn after opening time without approval by the Agency based on a written acceptable reason.
- 1.10 Purchases made for the Agency's use are exempt from the State Sales Tax and Federal Excise Tax. Do not include tax in bid. Excise Tax Exemption Certificate will be furnished by the Agency upon request.
- 1.11 The Agency reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the Agency and to reject any and all bid items at the sole discretion of the Agency. The Agency also 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 Agency. Any contract may also be extended up to three months at the sole discretion of the Agency.
- 1.12 Consistent and continued tie bidding could cause rejection of bids by the Agency and/or investigation for antitrust violations.
- 1.13 Check below if preference is claimed under Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Section §20.38:
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
  - Texas Vegetation Native to the Region
  - USA produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy Efficient Products
  - Rubberized asphalt paving material
  - Recycled motor oil and lubricants
  - Products produced at facilities located on formerly contaminated property
  - Products and services from economically depressed or blighted areas
  - Vendors that meet or exceed air quality standards
  - Recycled or Reused Computer Equipment of Other Manufacturers
  - Foods of Higher Nutritional Value



1.14 The telephone number for fax submission of bids is 979-458-1217. This is the only number that will be used for the receipt of bids. The Agency shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

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

## **2. SPECIFICATIONS**

2.1 Any catalog, brand name, or manufacturer's reference used in the IFB 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 other than specified, bid should show manufacturer, brand or trade name, and other description of the product offered. If brand(s) other than 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 IFB.

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

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 Samples, when requested, must be furnished free of expense to the Agency. 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 the Agency bid number. Do not enclose in or attach bid to sample.

2.5 The Agency will not be bound by any oral statement or representation contrary to the written specifications of this IFB.

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

## **3. TIE BIDS**

In case of tie bids, the award will be made in accordance with Rule §20.36 (b) (3) in Title 34 of the Texas Administrative Code.

## **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 supplier 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, supplier shall give written notice to the Agency. Bidder must keep the Agency advised at all times of the status of the order. The Agency has the right to extend delivery date if reasons appear valid. If the vendor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the Agency reserves the right to purchase specified supplies elsewhere, and charge the full increase in price, cost of handling, and rebidding, if any, to the vendor.

4.3 No substitutions or cancellation permitted without written approval of the Agency.

4.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from the Agency.

## **5. INSPECTIONS AND TESTS**

All goods will be subject to inspection and test by the Agency to the extent practicable at all times and places. Authorized Agency 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. 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 the Agency'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. AWARD OF CONTRACT**

A response to an IFB is an offer to contract with the Agency 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. 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 Brazos County, TX.

## **7. PAYMENT**

Vendor shall submit one copy of an itemized invoice showing order number and Agency purchase order number. Please note: If the invoice is not addressed as instructed, payment will be delayed. The Agency 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 will be made in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

## **8. PATENTS OR COPYRIGHTS**

The bidder agrees to protect the Agency from claims involving infringement of patents or copyrights.

**9. BIDDER ASSIGNMENTS**

Bidder hereby assigns to the Agency 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, Texas Business and Commerce Code Ann. Sec. 15.01, et seq. (1967).

**10. BIDDER AFFIRMATION**

Signing this IFB with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, 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 IFB.
- 10.2 The bidder is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- 10.3 Under §2155.004, Texas Government Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.4 Pursuant to 15 U.S.C. §1, et seq. and Texas Business and Commerce Code §15.01, et seq. neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation, or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.5 The bidder shall defend, indemnify, and hold harmless the Agency, all of its officers, agents, contractors, and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, from any acts or omissions of vendor or any agent, employee, subcontractor, or supplier of vendor in the execution or performance of any contract with vendor resulting from this IFB. Bidder shall coordinate its defense with Texas Attorney General as requested by the Texas A&M University System, Office of the General Counsel. This section is not intended to and shall not be construed to require bidder to indemnify or hold harmless the State or Agency for any claims or liabilities resulting from the negligent acts or omissions of the Agency or its employees.
- 10.6 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.
- 10.7 In accordance with §2155.4441, Texas Government Code, bidder agrees that during the performance of a contract for services, it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 10.8 Pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the vendor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, the vendor or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.
- 10.9 Bidder certifies that they are in compliance with Section 669.003 of the Texas Government Code, relating to contracting with an 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 certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local government entity. Bidder certifies that the bidding entity is in compliance with the State of Texas statutes and rules relating to procurement, and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>
- 10.11 Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Texas Government Code, relating to the prohibition of using state funds for lobbying activities.
- 10.12 Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Texas Government Code, occurring after September 24, 2005. Under §2155.006, Texas Government Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

10.13 Bidder represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it offers to provide to the Agency under this bid (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 vendor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then vendor represents and warrants that it will, at no cost to the Agency, 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 vendor is unable to do so, then the Agency may terminate this Agreement and vendor will refund to the Agency all amounts the Agency has paid under this purchase order within thirty (30) days after the termination date.

**11. NOTE TO BIDDERS**

If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in the bid and bidder’s proposed alternative must also be provided in the bid. Bidders cannot take a ‘blanket exception’ to the entire IFB. If any bidder takes a ‘blanket exception’ to the entire IFB or does not provide proposed alternative language, the bid may be disqualified from further consideration.

**12. TEXAS PUBLIC INFORMATION ACT**

- 12.1 The bidder acknowledges that the Agency 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 any resulting Agreement, as well as any other disclosure of information required by applicable Texas law.
- 12.2 Upon the Agency’s written request, the bidder will provide specified public information exchanged or created under any resulting Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to the Agency in a non-proprietary format acceptable to the Agency. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which the Agency has a right of access.
- 12.3 The bidder acknowledges that the Agency is required to post a copy of any fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

**13. TEXAS FAMILY CODE SECTION 231.006**

Pursuant to §231.006(d), Texas Family Code, regarding 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 the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

**14. PROTEST PROCEDURES**

Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB may formally protest as provided in the Agency’s rules at <http://agrififeas.tamu.edu/library/pdf/purchasing/vendor-protests.pdf>.

**15. NON-APPROPRIATION OF FUNDS**

Any contract resulting from this IFB is subject to termination or cancellation, without penalty to the Agency, either in whole or in part, subject to the availability of federal or state funds. The Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render the Agency’s or bidder’s delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. Additionally, any federally funded purchases may also be terminated for the same reasons. In the event of a termination or cancellation under this Section, the Agency will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation, and the Agency will not be required to give prior notice.

**16. FORCE MAJEURE**

Neither bidder nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force Majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and, that by exercise of due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such Force Majeure, or otherwise waive this right as a defense.

## 17. CONFLICT OF INTEREST

An Agency employee may not have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the Agency must be mindful of these restrictions when interacting with public purchasers of the Agency.

## 18. INDEPENDENT CONTRACTOR

Bidder or bidder's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this IFB. Bidder and bidder's employees, representatives, agents and any subcontractors shall not be employees of the Agency. Should bidder subcontract any of the services required in this IFB, bidder expressly understands and acknowledges that in entering into such subcontract(s), the Agency is in no manner liable to any subcontractor(s) of bidder. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this IFB.

## 19. DISPUTE RESOLUTION

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used as further described herein, by the Agency, and the bidder to attempt to resolve any claim for breach of contract made by vendor:

19.1 Bidder'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, bidder shall submit written notice, as required by Subchapter B, to:

**Dr. David Lunt, Texas A&M AgriLife Research**  
**Dr. Robert Whitson, Texas A&M AgriLife Extension Service**  
**Dr. Amy Swinford, Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL)**

Said notice shall also be given to all other representatives of the Agency and bidder otherwise entitled to notice under the parties' contract. Compliance by bidder 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.

19.2 The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the bidder's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Agency if the parties are unable to resolve their disputes under subparagraph (a.) of this paragraph.

19.3 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 the Agency, nor any conduct of any representative of the Agency thereafter, shall be considered a waiver of sovereign immunity to suit.

- (1) The submission, processing, and resolution of bidder'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 nor the pendency of a claim constitutes grounds for the suspension of the performance by the bidder, in whole or in part.
- (3) The designated individual responsible on behalf of the Agency for examining any claim or counterclaim and conducting any negotiations related thereto, as required under Section 2260.052 of the Texas Government Code shall be Dr. David Lunt (Research) / Dr. Susan Ballabina (Extension) / Dr. Amy Swinford (TVMDL).

## 20. 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 a research member of the Texas A&M University System, the Agency typically does not take receipt of export controlled goods, technical data, services or technology ("materials") except as may be specifically agreed to by the Agency. Bidder agrees that it will not provide or make accessible to the Agency any export controlled materials without first informing the Agency of the export controlled nature of the materials and obtaining from the Agency, its written consent to accept such materials as well as any specific instructions for delivering controlled materials to the Agency. Bidder agrees to obtain government approval or export license if required from the appropriate US government agency and to share that information with the Agency prior to delivery of such materials.

Bidder shall provide the Agency with applicable export control classification number (ECCN) or category (EAR or ITAR) for item(s), and/or indicate whether the item(s) to be purchased are export controlled.

ECCN or ITAR Category: \_\_\_\_\_

**TEXAS A&M AGRILIFE RESEARCH  
TEXAS A&M AGRILIFE EXTENSION SERVICE  
TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY  
FEDERALLY FUNDED PROJECTS ADDENDUM**

All contracts or purchase orders made or entered into by Texas A&M AgriLife Purchasing using Federal funds must contain provisions.

If not registered, then register your business with the federal government's [SAM](#), the primary database of contractors doing business with the federal government. All prospective contractors should be registered in SAM prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement.

The below terms, as applicable, are incorporated into and made a part of the Purchase Order (also referred to herein as "Agreement") issued by Texas A&M AgriLife Purchasing to the vendor identified on the attached Purchase Order (hereafter referred to as "Contractor"):

**I. ALL CONTRACTS OR PURCHASE ORDERS (as applicable)**

- A. Equal Employment Opportunity** – Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Specifically, Contractor and any its subcontractors, if any, 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, sexual orientation, gender identity 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, sexual orientation, gender identity, national origin, disability or veteran status.

- B. Rights to Inventions Made Under a Contract or Agreement** – If the Purchase Order includes the performance of experimental, developmental, or research work, any Subject Invention (as that term is defined in 37 CFR 401, et seq.) conceived or reduced to practice by Contractor shall be subject to the provisions of 37 CFR 401, et seq., as well as any other rights of the Federal Government and the Agency described in any implementing regulations issued by the awarding agency.

- C. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** – If the Purchase Order amount exceeds \$150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- D. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – If the Purchase Order amount exceeds \$100,000, Contractor (and, if required, its subcontractors) shall file the certifications required by 31 U.S.C. 1352 and related regulations, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor (and, if required, its sub-contractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

- E. Debarment and Suspension (E.O.s 12549 and 12689)** – Contractor represents and warrants that to the best of its knowledge and belief neither it nor any of Contractor's Principals (as that term is defined in 2 CFR 180.995) (nor any other person or entity affiliated with Contractor and for whom the standing under the laws is imputed to Contractor as described in 2 CFR 180.630) is listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If the purchase order amount exceeds the small purchase threshold (currently, \$250,000), the Contractor shall provide the Agency with the required certification regarding its exclusion status and that of its principal employees. An incorrect representation or certification may result in a termination of this Agreement by Agency for cause.

- F. Records Access** If the Purchase Order amount exceeds \$100,000, Contractor understands and acknowledges that the Agency, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of conducting audits, examinations, excerpts and transcriptions. (See OMB Circular A-110 \_\_. 48(d))

- G. Energy Policy and Conservation.** Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94- 163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

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TEXAS A&M AGRILIFE EXTENSION SERVICE  
TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY  
FEDERALLY FUNDED PROJECTS ADDENDUM**

**H. Procurement of recovered materials.** Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

**I. Waste Disposal Act.** Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**J. Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** – If the Purchase Order amount exceeds \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

**K. Termination.**

1. **Termination for Cause:** The Agency may terminate the Agreement, in whole or in part, effective upon receipt of written notice of default to the Contractor, in any one of the following circumstances:

- a) if Contractor fails to perform any duties or obligations within the time specified in the Agreement or any written extension thereof granted by Agency;
- b) if Contractor so fails to make progress as to endanger performance of the Agreement in accordance with its terms;
- c) if Contractor fails to comply with any of the material terms and conditions of the Agreement. Such termination shall become effective if Contractor does not cure such failure within a period of ten (10) days after written notice of default by Agency; or
- d) If the Contractor is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for or against the other under any provision of the Federal Bankruptcy Act or any amendment thereof.

2. **Termination for Convenience:** The Agency may terminate performance of work under the Agreement for convenience, in whole or, from time to time, in part if the Agency purchasing officer, or his/her designee, determines that a termination is in the Agency's best interest.

The Agency may terminate the Agreement for convenience by providing: (1) a written statement that the Agreement is being terminated for the convenience of the Agency; (2) the effective date of termination; (3) the extent of termination (in whole or in part); (4) any special instructions; and (5) the steps the Contractor is to take to minimize the impact on personnel and the incurrence of costs.

Upon a notification of Termination for Convenience, the Contractor is to: (1) stop work immediately on the terminated portion of the Agreement; (2) terminate all subcontracts and procurements related to the terminated portion of the Agreement; (3) advise the Agency of any special circumstances arising from the termination of the Agreement; (4) continue performance of the Agreement to the extent not terminated if the termination is partial; (5) take any action necessary to protect property in the Contractor's possession in which the Agency has an interest; (6) notify the Agency of any legal proceedings growing out of any subcontract; (7) settle any subcontractor claims arising out of the termination; and (8) deliver to Agency a "termination inventory" that lists materials produced or acquired under the Agreement and dispose of termination inventory as directed by the Agency.

3. **Remedies, Sanctions and Penalties:** If the Agreement is terminated for cause or convenience, the Agency may either re-solicit or award a contract to a respondent third party. Additionally, the Agency may procure, upon such reasonable terms as it shall deem appropriate, services similar to those so terminated. In the event of Contractor's default hereunder, Agency may exercise any or all rights accruing to it, at law (including but not limited to those set forth in Article 2 of the Uniform Commercial Code), in equity, or under the terms of the Agreement.

If the Agreement is terminated for cause, the Contractor may be responsible for all damages accruing to the Agency including but not limited to re-procurement costs, and any consequential damages to the Agency resulting from Contractor's default or breach. The Contractor will not be considered in any such re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly

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TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY  
FEDERALLY FUNDED PROJECTS ADDENDUM**

changed.

Any obligations under the warranty, patent, indemnification, and confidentiality provisions of the Agreement shall survive such termination.

**4. Basis for Settlement:**

If the Agreement is terminated for convenience, Agency will pay the Contractor as follows:

- a. For service Agreements, the Agency shall pay be liable only for payment under the payment provisions of the Agreement for services rendered before the effective date of termination.
- b. For fixed price Agreement where Paragraph a. does not apply, the Contractor shall submit a final termination settlement proposal to the Purchasing Officer in the form and with the certification prescribed by the Purchasing Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Purchasing Officer upon written request of the Contractor within this 1-year period. However, if the Purchasing Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Purchasing Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
  - (i.) Subject to paragraph 4. b. above, the Contractor and the Purchasing Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (i.) or paragraph (ii.) of this clause, exclusive of costs shown in paragraph (ii.)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (ii.) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
  - (ii.) If the Contractor and the Purchasing Officer fail to agree on the whole amount to be paid because of the termination of work, the Purchasing Officer shall pay the Contractor the amounts determined by the Purchasing Officer as follows, but without duplication of any amounts agreed on under paragraph (i) of this clause:
    - (1) The contract price for completed supplies or services accepted by the Agency not previously paid for, adjusted for any saving of freight and other charges.
    - (2) The total of—
      - (a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (ii.)(1) of this clause;
      - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (ii.)(2)(a) of this clause; and
      - (c) A sum, as profit on subdivision (ii.)(2)(a) of this clause, determined by the Purchasing Officer under [49.202](#) of the Federal Acquisition Regulation, in effect on the date of the Agreement, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Agreement had it been completed, the Purchasing Officer shall allow no profit under this subdivision (ii.)(2)(c) and shall reduce the settlement to reflect the indicated rate of loss.
    - (3) The reasonable costs of settlement of the work terminated, including—
      - (a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
      - (b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
      - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- c. For Agreements of specially manufactured goods, the Agency shall pay the Agreement price or rate for supplies and/or goods delivered and accepted.

If the Agreement is terminated for Cause, payment, if any, to Contractor shall be determined based on the supplies and/or services delivered and accepted prior to termination less any damages suffered by Agency as a result of Contractor's default or breach. Specifically, the Agency may withhold amounts due to Contractor as the Agency deems necessary to reimburse the Agency for excess costs incurred in curing, completing or procuring similar goods and/or

**TEXAS A&M AGRILIFE RESEARCH  
TEXAS A&M AGRILIFE EXTENSION SERVICE  
TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY  
FEDERALLY FUNDED PROJECTS ADDENDUM**

services. If after terminating the Agreement for default, the Agency determines for any reason that Contractor was not in default or the delay was excusable, the rights and obligations of the Agency and Contractor shall be the same as if a notice of termination for convenience had been issued.

**II. CONSTRUCTION AND/OR REPAIR CONTRACTS OR PURCHASE ORDERS:**

In addition to the above provisions, the following provisions shall apply to and are incorporated into any Agreement for construction or repair, as applicable:

- L. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – If the Purchase Order is for construction or repair and the amount exceeds \$2,000, the Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "contractors and subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides, in part, that the Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
- M. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** If the Purchase Order is for construction or repair and the amount exceeds \$2,000, Contractor covenants and agrees that all laborers and mechanics employed by Contractor and its subcontractors to perform the Agreement will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Contractor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week. Wage determinations for States/Counties can be found at: <https://wdol.gov/dba.aspx>
- N. Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** – If the Purchase Order is for construction or repair, the amount exceeds \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- O. If the Purchase Order is for construction or repair and the amount exceeds \$100,000, during the performance of the Agreement, the Contractor agrees as follows:**
- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
- Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers'



**TEXAS A&M AGRILIFE RESEARCH  
TEXAS A&M AGRILIFE EXTENSION SERVICE  
TEXAS A&M VETERINARY MEDICAL DIAGNOSTIC LABORATORY  
FEDERALLY FUNDED PROJECTS ADDENDUM**

representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Agency or federal government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor or subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a contractor or subcontractor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of subcontractors and lower-tier subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any subcontract or subcontract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon subcontractors and lower-tier subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Bonding Requirement for Construction or Facilities Improvements or construction or facility improvement contracts or subcontracts exceeding \$250,000. If required, bonding forms are attached.

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid
- (b) A performance bond on the part of the contractor for 100 percent of the contract price.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price.