

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 Texas A&M AgriLife Procurement Office on or before the hour and date specified for the bid opening.
- 1.4 Bids sent via U.S. Postal Service should be addressed to Texas A&M AgriLife Procurement, 2147 TAMU, College Station, TX 77843-2147. For delivery service (UPS, FedEx, etc) or hand deliveries requiring a street address, send bids to Texas A&M AgriLife Procurement, 578 John Kimbrough Blvd., AGSV Building, Room #419, College Station, TX 77843-2147.
- 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 INCO terms "Delivered Duty Paid for products imported in the United States." 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 90 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 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 No bid may be withdrawn after opening time without approval by the Texas A&M AgriLife Procurement Office.
- 1.9 Purchases made for use by the Agency are exempt from State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificate will be furnished by the Agency upon request.
- 1.10 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.
- 1.11 Any resulting agreement may be extended up to three months at the sole discretion of the Agency.
- 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
 - ☐ Bidders that meet or exceed air quality standards
 - ☐ Bidders providing goods of higher nutritional value
- 1.13 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.
- 1.14 Consistent and continued tie bidding could cause rejection of bids by the Agency and/or investigation of antitrust violations.

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

2. SPECIFICATIONS.

- 2.1 Any catalogue, 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 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 the 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, including containers suitable for shipment and storage, unless otherwise indicated in the 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, address, and 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.** 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.

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 the Texas A&M AgriLife Procurement Office. The Agency has the right to extend delivery date for valid reasons. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes the Agency 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 AgriLife Procurement Office.
- 4.4 Delivery shall be made during normal working hours unless prior approval for late delivery has been obtained from the Agency.

5. **INSPECTION 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 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 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. BIDDER AFFIRMATIONS.** Submission of a bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contract, and the bidder shall be removed from all bid lists. By submitting a bid, the bidder hereby certifies the following:
- 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 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 §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 The Agency 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. Under §2155.004(b), Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any resulting 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 and Agency, 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 any resulting purchase order.
 - 6.6 Pursuant to §2107.008 and §2252.903, Texas Government Code, bidder agrees that any payments due under any resulting purchase order will be applied towards any debt or delinquency that is owed to the State of Texas.
 - 6.7 Bidder certifies that they are in compliance with §669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency. If §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 Texas Government Code §2155.4441, pertaining to service contract use of products produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.
 - 6.9 Bidder understands that acceptance of funds under any resulting purchase order 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.
 - 6.10 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 resulting purchase order or contract. Bidder acknowledges any resulting agreement with the Agency may be terminated and payment withheld if this certification is inaccurate.
 - 6.11 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 any resulting agreement with the Agency may be terminated and payment withheld if this certification is inaccurate.
 - 6.12 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. Under §2155.0061, Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any resulting contract may be terminated and payment withheld if this certification is inaccurate."
 - 6.13 By executing and/or accepting any resulting 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 the Agency or TAMUS, has direct or indirect financial interest in the award of any resulting agreement, or in the services to which this agreement relates, or in any of the profits, real or potential, thereof.
 - 6.14 Bidder acknowledges and understands that §2252.901, Texas Government Code, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the Agency within the past twelve (12) months. If bidder is an individual, by accepting any resulting purchase order or contract, bidder certifies that §2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
 - 6.15 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 (a) all arrears have been paid or (b) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under §231.006, Texas Family Code, the bidder certifies that the individual or business entity named in this bid and any resulting contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that any resulting contract may be terminated and payment may be withheld if this certification is inaccurate.
 - 6.16 Bidder acknowledges it is their responsibility to ensure that its employees involved in any work being performed for the Agency under any resulting agreement have not been designated as "Not Eligible for Rehire" as defined in System Policy 32.02, *Discipline and Dismissal of Employees*, §4 ("NEFR Employee"). In the event the Agency becomes aware that the awarded bidder has a NEFR Employee involved in any work being performed under any resulting agreement, the Agency will have the sole right to demand removal of such NEFR Employee from work being performed under any resulting agreement. Non-conformance to this requirement may be grounds for termination of any resulting agreement by the Agency.
 - 6.17 Under Section 2155.077 of the Texas Government Code, Bidder certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any resulting agreement by any state or federal agency.
 - 6.18 Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit the Agency from awarding a contract that includes proposed financial participation by a person who, in the past 5 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 Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Bidder certifies that the individual or business entity named in any resulting agreement is not ineligible to receive the specified contract and acknowledges that any resulting agreement may be terminated and payment withheld if this certification is inaccurate.
 - 6.19 Bidder represents and warrants that: (1) it does not, and will not for the duration of any resulting agreement, boycott energy companies

- or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to any resulting agreement. If circumstances relevant to this provision change during the course of any resulting agreement, Bidder shall promptly notify the Agency.
- 6.20 Bidder verifies that (1) it does not, and will not for the duration of any resulting agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to any resulting agreement. If circumstances relevant to this provision change during the course of any resulting agreement, Bidder shall promptly notify the Agency.
- 6.21 Bidder certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 6.22 Bidder certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Bidder's business. Bidder acknowledges that such a vaccine or recovery requirement would make Bidder ineligible for a state-funded contract.
- 6.23 If the Bidder will have access to the Agency's computer system or database as part of the services under any resulting agreement, then Bidder represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- 6.24 If Bidder will provide consulting services under any resulting agreement, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Bidder certifies that it does not employ an individual who has been employed by the Agency or another agency at any time during the two (2) years preceding any resulting agreement or, in the alternative, Bidder has disclosed the following: (i) the nature of the previous employment with the Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- 6.25 Bidder represents and warrants that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources ("RAMP"). Pursuant to Section 2054.0593, Texas Government Code, Bidder shall maintain RAMP compliance and certification, as may be amended from time to time, throughout the term, including any renewal term of any resulting agreement. Bidder shall provide the Agency with evidence of its RAMP compliance and certification within thirty (30) days of the Agency's request and at least thirty (30) days prior to the start of any renewal term of any resulting agreement.
- 6.26 Bidder represents and warrants that the goods it provides to the Agency under any resulting agreement are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.
- 6.27 Bidder certifies that pursuant to Executive Order GA-48, Hardening of State Government, bidder is not and, if applicable, none of its holding companies or subsidiaries are a) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; b) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; c) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or d) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. Bidder acknowledges that a false certification is grounds for immediate termination of any resulting agreement with no further obligation on the part of the Agency or the Texas A&M University System.
7. **CONFLICTING TERMS & CONDITIONS.** 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. Any terms and conditions attached to a bid will not be considered unless the bidder specifically refers to them in its bid response.
- WARNING: SUCH TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF THE BID. (E.G. BIDS WITH THE LAWS OF A STATE OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC.)**
8. **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.
9. **PAYMENT.** All invoices shall be itemized, showing order number and Agency purchase order number. 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. Payments will be made by direct deposit whenever possible. In order to receive payment under any resulting contract, vendor must electronically submit an invoice to the Agency as instructed on the purchase order. The invoice must include the following information and/or attachments to ensure payment:
- (1) Name and address of the vendor.
 - (2) Vendor's Texas Identification Number (TIN).
 - (3) Vendor's invoice remittance address.
 - (4) The purchase order or contract number authorizing the delivery of products or services.
 - (5) A description of what the vendor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the vendor must also include the payment number (e.g., 1 of 36).
- Please note: If the invoice is not emailed as instructed, payment may be delayed.
10. **PATENTS OR COPYRIGHTS.** The bidder agrees to protect the Agency from claims involving infringement of patents or copyrights.
11. **BIDDER ASSIGNMENTS.** Bidder hereby assigns to the Agency any and all claims for overcharges associated with any resulting contract which arise under the antitrust laws of the United States 15 U.S.C.A. §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.** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Pursuant to Texas Government Code, §552.021 and §552.023, individuals are entitled to request, receive, review, and correct information collected by the Agency related to the individual. Please submit requests for information via email to openrecords@ag.tamu.edu.
- 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. Upon the Agency's written request, bidder will promptly provide specified contracting information exchanged or created under any resulting agreement for or on behalf of the Agency. Bidder acknowledges that the Agency may be required to post a copy of the fully executed agreement on its Internet website in compliance with §2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to any resulting agreement, and bidder agrees that any resulting agreement can be terminated if bidder knowingly or intentionally fails to comply with a requirement of that subchapter.
13. **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, the Agency typically does not take receipt of export-controlled goods, technical data, services or technology ("Materials") except as may be specifically agreed 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 to 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. In the event that any purchased item is export controlled under the U.S. Export Control Regulations, bidder shall provide the Agency with the export control classification and failure to do so may

result in the cancellation of the respective purchase order or agreement.

14. VENDOR ACCESS.

- 14.1 Bidder hereby acknowledges responsibility to comply with all applicable Agency 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 the Agency.

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 §51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by the Agency to be essential to the continued performance of the mission of the Agency, the unavailability of which would result in consequences to the Agency.

In the event bidder should obtain or be granted access to Confidential and/or Mission Critical Information of the Agency ("Agency Information"), bidder will keep and protect Agency Information confidential to no less than the same degree of care as required by Agency policies, rules and procedures. At the expiration or early termination of any resulting agreement, bidder agrees to return all Agency Information or agrees to provide adequate certification that the Agency Information has been destroyed. Bidder, its employees, agents, contractors, and subcontractors shall use the Agency Information solely in connection with performance by bidder of the services provided to the Agency pursuant to any resulting agreement, and for no other purpose. Should bidder, its employees, agents, contractors, or subcontractors acquire other Agency Information during the course of any resulting 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 Agency non-disclosure agreement applicable to any resulting agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of any resulting agreement and the eligibility for bidder to receive any Agency Information from the Agency for a period of not less than five (5) years.

Both parties shall each provide contact information for specific individuals. Should the designated contacts 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 Agency Information, that request shall be directed to the Agency's designated contact. Further, bidder is responsible for reporting all security breaches directly to Texas A&M AgriLife Information Technology's Chief Information Security Officer.

- 14.2 Pursuant to Section 2054.138, Texas Government Code, Bidder shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://dir.texas.gov/resource-library-item/security-control-standards-catalog> and <https://cyber-standards.tamus.edu/>, as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of the Agency's data. Bidder shall periodically provide the Agency with evidence of its compliance with the Security Controls within thirty (30) days of the Agency's request.

1. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Bidder represents and warrants that the goods and services offered hereunder comply with the accessibility requirements in Title 1, Chapters 206 and 213 of the Texas Administrative Code and Title II of the Americans with Disabilities Act and the technical standards set forth in the Web Content Accessibility Guidelines 2.1, level AA (available at <https://www.w3.org/TR/WCAG21>), as published by the Web Accessibility Initiative of the World Wide Web Consortium (the "Accessibility Warranty"). Bidder shall promptly respond to and use commercially reasonable efforts to resolve and remediate any noncompliance with the Accessibility Warranty. In the event that Bidder fails or is unable to do so, the Agency may immediately terminate any resulting agreement, and Bidder will refund to the Agency all amounts paid by the Agency under any resulting agreement within thirty (30) days following the effective date of termination.

15. **SUSTAINABILITY.** The Agency is committed to Agency-wide 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. The Agency 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.

16. **DISPUTE RESOLUTION.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to any resulting agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the Agency and the awarded bidder to attempt to resolve any claim for breach of contract made by the awarded bidder that cannot be resolved in the ordinary course of business. The awarded bidder shall submit written notice of a claim of breach of contract under this Chapter to:

Stephen Cisneros, Texas A&M AgriLife Research;
Dr. Angela Burkham, Texas A&M AgriLife Extension Service; or
Dr. Amy Swinford, Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL)

This person shall examine the awarded bidder's claim and any counterclaim and negotiate with the awarded bidder in an effort to resolve the claim. This provision and nothing in any resulting agreement waives the Agency's sovereign immunity to suit or liability and the Agency has not waived its right to seek redress in the courts.

17. **FORCE MAJEURE.** Neither party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached any resulting agreement for failure or delay in fulfilling or performing any obligation under any resulting agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
18. **INDEPENDENT CONTRACTOR.** Bidder, if awarded a contract, is an independent contractor, and neither bidder, nor any employee of bidder, shall be deemed to be an agent or employee of the Agency. The Agency will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Bidder shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of the Agency relative to conduct on its premises.

19. **GOVERNING LAW.** The validity of any resulting agreement and all matters pertaining to any resulting 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.

20. **VENUE.** Pursuant to §85.18, Texas Education Code, venue for any suit filed against the Agency shall be in Brazos County, Texas.

21. **RECORDS RETENTION.** Bidder shall preserve all contracting information, as defined under Texas Government Code, §552.003 (7), related to any resulting agreement for the duration of the agreement and for seven (7) years after the conclusion of the agreement.

22. **NON-DISCRIMINATION.** The bidder and its agents and employees are prohibited from engaging in or allowing any impermissible discrimination on the basis of race, religion, color, national origin, age, sex, disability, genetic information or veteran status in relation to (1) the bidder's employment practices; (2) the performance of the bidder's obligations under any resulting agreement. In performing its obligations under any resulting agreement, bidder shall be subject to, and shall comply with, all

currently effective or subsequently promulgated policies regarding non-discrimination issued by either the Agency or the Texas A&M University System.

- 23. ASSIGNMENT.** Bidder shall not assign its rights under any resulting agreement or delegate the performance of its duties under any resulting agreement without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.
- 24. PUBLICITY.** Bidder shall not use the Agency's or TAMUS' name, logo, or other likeness in any press release, marketing material, or other announcement without the Agency's or TAMUS' prior written approval. The Agency does not endorse any vendor, commodity, or service. Bidder is not authorized to make or participate in any media releases or public announcements pertaining to any resulting procurement, the agreement, or the services to which they relate without the Agency's prior written consent, and then only in accordance with explicit written instructions from the Agency.
- 25. NOTICES.** Any notices required or permitted under any resulting agreement must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The Parties may change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

USPS Mail:

Texas A&M AgriLife – Procurement Office
2147 TAMU
College Station, TX 77843

Express Mail Delivery (FedEx, UPS, etc):

Texas A&M AgriLife – Procurement Office
578 John Kimbrough Blvd, Suite 419
College Station, TX 77843

Email:

agpurchasing@ag.tamu.edu

26. TERMINATION.

- 26.1 Convenience.** The Agency may, in its sole discretion, terminate any resulting agreement upon thirty (30) days' written notice to vendor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon vendor's receipt. In the event of such termination, the vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Agency shall be liable only for payments for any goods or services ordered from the vendor before the termination date.
- 26.2 Cause/Default.** In the event of substantial failure by vendor to perform in accordance with the terms of any resulting agreement, the Agency may terminate any resulting agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the Agency.
- 26.3 Loss of Funding.** Any resulting agreement is subject to termination or cancellation, without penalty to the Agency, either in whole or part, subject to availability of state, federal or local funding.
- 26.4 Rights upon Termination or Expiration.** In the event any resulting agreement is terminated for any reason, or upon its expiration, the Agency shall retain ownership of all associated work products and documentation obtained from vendor under any resulting agreement. Further, the Agency and the State of Texas shall not be liable to vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, vendor may be entitled to the remedies provided in Texas Government Code, Chapter 2260. No later than the first calendar day after the termination of any resulting agreement, or at the

Agency's request, vendor shall deliver to the Agency all completed, or partially completed, work and any and all documentation or other products and results of these services.

- 27. INAPPLICABLE PROVISIONS.** None of the following provisions, if they appear in any resulting agreement, shall have any effect or be enforceable against the Agency: (i) requiring the Agency to maintain any type of insurance either for the Agency's benefit or for Bidder's benefit; (ii) renewing or extending the initial agreement term or automatically continuing or renewing the original agreement term; (iii) binding the Agency to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any other alternative dispute resolution other than is provided herein; (iv) requiring the Agency to not disclose or maintain as confidential the terms of the agreement and/or any pricing information contained in the agreement; (v) requiring the Agency to make warranties of any kind; and (vi) requiring the Agency to indemnify Bidder from/against any claims, damages, suits, penalties, fines and/or costs resulting from the negligence or intentional acts of Bidder or Bidder's employees, representatives or agents.