

ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF THE PURCHASE
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.

1. VENDOR REQUIREMENTS

- 1.1 Vendors must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 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. Vendor guarantees product or service offered will meet or exceed specifications included.
- 1.3 Purchases should be "F.O.B. destination, freight prepaid and allowed". However, if vendor quoted freight otherwise, then face of order should show exact delivery cost and who bears cost if not included in unit price.
- 1.4 Prices are firm for within 30 days of the offer. Cash discounts were not considered in determining the best value. All cash discounts will be taken if earned.
- 1.5 Purchases made for the Agency's use are exempt from the State Sales tax and Federal Excise tax. Excise Tax Exemption Certificate will be furnished by the Agency upon request.
- 1.6 The Agency reserves the right to accept or reject all or any part of any offer, waive minor technicalities and issue the purchase order to the vendor that best serves the interests of the State. Any contract may also be extended up to three (3) months at the sole discretion of the Agency.
- 1.7 Consistent and continued tie offers could cause rejection of offers by the Agency and/or investigation for antitrust violations.

2. SPECIFICATIONS

- 2.1 Any catalogue, brand name, or manufacturer's reference used is descriptive only (not restrictive), and is used to indicate type and quality desired. Therefore, offers of brands of like nature and quality were considered unless otherwise specified. Vendor will be required to furnish brand names, numbers, etc., as specified on the purchase order unless noted otherwise at time of offer.
- 2.2 All items shall be new and unused, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated.
- 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 The Agency will not be bound by any oral statement or representation contrary to the terms and conditions of this purchase.
- 2.5 Manufacturer's standard warranty shall apply unless otherwise stated.

3. DELIVERY

- 3.1 Order delivery time as shown on the face of the purchase order reflects the number of days required to place material in receiving agency's designated location under normal conditions. Failure of vendor to state delivery time obligates supplier to complete delivery in 14 calendar days.
- 3.2 If delay is foreseen, supplier shall give written notice to the Agency. The Agency has the right to extend delivery date if reasons appear valid. If the supplier 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.
- 3.3 No substitutions or cancellation permitted without written approval of the Texas A&M AgriLife Purchasing Department.
- 3.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from the Agency.

4. INSPECTION AND TESTS

All goods will be subject to inspection and test by 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 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 supplier. Goods which have been delivered and rejected in whole or in part may, at the Agency's option, be returned to the supplier or held for disposition at supplier's risk and expense. Latent defects may result in revocation of acceptance.

5. AWARD OF CONTRACT

A response to an Invitation for Bid is an offer to contract with the Agency based upon the terms, conditions, and specifications contained herein. Offers do not become contracts until they are accepted and an authorized purchase order is issued. The contract shall be governed, construed, and interpreted under the laws of the State of Texas.

6. PAYMENT

Supplier 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 on an uncontested invoice. All payments will be made in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

7. PATENTS OR COPYRIGHTS

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

8. SUPPLIER ASSIGNMENTS

Supplier hereby assigns to purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business and Commerce Code Ann. Sec. 15.01, et seq. (1967).

9. VENDOR AFFIRMATION

By accepting this order, the vendor affirms any false statement is a material breach of contract and shall void the submitted quote or any resulting contracts, and the vendor shall be removed from all bid lists. By signature hereon affixed, the vendor hereby certifies that:

- 9.1 The vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- 9.2 The vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- 9.3 Pursuant to Section 2155.004, Texas Government Code, relating to collection of state and local sales and use taxes, the vendor certifies that the individual or business entity named in this order is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 9.4 Neither the vendor nor the firm, corporation, partnership or institution represented by the vendor, or anyone acting for such firm, corporation, partnership or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 9.5 The vendor had not received compensation for participation in the preparation of the specifications for order.
- 9.6 The supplier shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, from any acts or omissions of supplier or any agent, employee, subcontractor, or supplier of supplier in the execution or performance of this purchase order.
- 9.7 Vendor hereby 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.
- 9.8 Vendor certifies that they are in compliance with Section 669.003 of the Texas Government Code, relating to contracting with an executive of a state agency, Vendor represents that no person who, in the past four years, served as an executive of the Texas Comptroller of Public Accounts, Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service, TVMDL, or any other state agency, was involved with or has any interest in this bid or any contract resulting from this bid. If vendor employs or has used the services of a former executive head of Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service, TVMDL, or other state agency, then respondent shall provide the following information relating to contracting with an executive head of a state agency.

Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Vendor: _____
Date of Employment with Vendor: _____

- 9.9 Vendor agrees to comply with Texas Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.
- 9.10 Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract awards.
- 9.11 Vendor 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 purchase order (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.

10. NOTE TO VENDORS

Any terms and conditions attached to a quote will not be considered unless the vendor specifically refers to them in the quote. WARNING: Such terms and conditions may result in disqualification of the quote, (e.g. quotes with the laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.).

11. PUBLIC INFORMATION ACT

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, Sections 552.021 and 552.023, individuals are entitled to request, receive, review, and correct information collected by the Agency related to the individual. To request information, please email da-schneider@tamu.edu or call 979-847-5801.

12. TEXAS FAMILY CODE SECTION 231.006

Ineligibility to receive state grants or loans, or receive bids or payments on state contracts.

- 12.1 A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:
- (1) receive payments from state funds under a contract to provide property, materials, or services; or
 - (2) receive a state-funded grant or loan.
- 12.2 A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible until:
- (1) all arrearages have been paid; or
 - (2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.
- 12.3 Pursuant to Section 231.006 (c), Family Code, quote should include name and Social Security number of each person with at least 25% ownership of the business entity submitting the quote. Vendors that have pre-registered this information on the TPASS Centralized Master Bidders List have satisfied this requirement. If not pre-registered, attach name & Social Security number for each person. Otherwise this information must be provided prior to contract award.
- 12.4 Pursuant to Section 231.006, Family Code, re: child support, the vendor certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 12.5 If a state agency determines that an individual or business entity holding a state contract is ineligible to receive payment under Section (a) the contract may be terminated.
- 12.6 If the certificate required under Subsection (d) is shown to be false, the vendor is liable to the State for attorney's fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract.
- Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.
Amended by Acts 1995, 74th Leg., ch. 751, Sec. 82, eff. Sept. 1, 1995.

13. ALTERNATIVE DISPUTE RESOLUTION

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

- 13.1 Vendor's claim for breach of this contract, that the parties cannot resolve in the ordinary course of business, shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, vendor shall submit written notice, as required by Subchapter B, to:

Dr. David Lunt, Texas A&M AgriLife Research
Mr. Kyle Smith, Texas A&M AgriLife Extension Service
Dr. Roger Parker, Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL)

Said notice shall also be given to all other representatives of the Agency and vendor otherwise entitled to notice under the parties' contract. Compliance by vendor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

- 13.2 The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is vendor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Agency if the parties are unable to resolve their disputes under subparagraph (a) of this paragraph.
- 13.3 Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Ch. 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by 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 vendor's claim is governed by the published rules as adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260 as currently effective, hereafter enacted or subsequently amended.
 - (2) Neither the occurrence of an event, nor the pendency of a claim, constitutes grounds for the suspension of the performance by vendor, in whole or in part.

- (3) The designated individual responsible on behalf of the Agency for examining any claim or counterclaim and conducting any negotiations related thereto, as required under 2260.052 of the Texas Government Code shall be Dr. David Lunt (Research) / Mr. Kyle Smith (Extension) / Dr. Roger Parker (TVMDL).

14. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS

As required by 1 Texas Administrative Code, Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only):

- 14.1 Effective September 1, 2006, the Agency shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 14.2 Vendor shall provide the Agency with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Agency with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.