

TERMS AND CONDITIONS OF REQUEST FOR PROPOSAL – Attachment #1 - (Page 1 of 2)

I. TERMINOLOGY/DEFINITIONS

1. Closing Date and Time or Date and Time Returnable means the deadline required for the physical receipt of proposals by the Purchasing Office.
2. Request for Proposal (or RFP) means the procurement document issued by the Purchasing Office to potential offerors for the purchase of equipment, supplies, and/or services as described in the RFP document. The definition includes these Terms and Conditions as well as any other Attachments and Amendments to the RFP.
3. Must and Shall mean that a certain feature, component, or action is mandatory. Failure to comply will result in rejection of the proposal.

II. OPEN COMPETITION/RFP DOCUMENT

1. It is the offeror's responsibility to ask questions, request changes or clarification, or otherwise advise the Purchasing Office if any language, specifications, or requirements of the RFP appear to inadvertently restrict or limit the requirements of the RFP to a single source. Any and all communication from offerors regarding the RFP and the procurement process must be directed to the Buyer identified on the first page of the RFP. Such communication should be received at least five calendar days prior to the official Proposal Close Date.
2. The Purchasing Office reserves the right to officially modify or cancel the RFP after issuance. Offerors will be notified of any such modification or cancellation by issuance of an addendum from the Purchasing Office.

III. CONFLICT OF INTEREST

The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which could create such a conflict.

IV. PREPARATION OF PROPOSALS

1. Failure to carefully examine the RFP and all terms and conditions related thereto will be at the Offeror's risk.
2. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
3. Proposals lacking any written indication of intent to offer an alternate brand or to take an exception shall be considered to be in full compliance with the specifications and requirements of the RFP.
4. All equipment and supplies offered must be new and of current production and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
5. Prices quoted by the offeror must remain valid for a minimum of ninety (90) days from the date of proposal opening. If the proposal is accepted, prices shall remain firm for the specified period.

V. SUBMISSION OF PROPOSALS

1. Proposals must be signed by a duly authorized representative of the offeror's organization and must contain all necessary information in the manner required by the RFP.
2. The sealed envelope or package containing a proposal should be clearly marked with the official RFP number and the Proposal Close Date. Proposals for different RFPs should not be placed in the same envelope.
3. A proposal may only be modified or withdrawn (1) by signed, written notice received by the Purchasing Office prior to the

Proposal Close Date and Time or (2) in person by the offeror or its authorized representative, provided proper identification is presented before the Proposal Close Date and Time. Telephone requests to withdraw or modify a proposal will not be honored.

4. Offerors must, as a minimum, sign and return the RFP cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the offeror of all RFP terms and conditions. Failure to do so will result in rejection of the proposal unless the offeror's full compliance with those documents is indicated elsewhere within the offeror's response.

VI. PROPOSAL OPENING

1. All proposals will be opened at 3:00 p.m. on the date indicated. Prices will not be made available at that time and will not be made public until the evaluation is complete and an award is made.
2. It is the offeror's sole responsibility to ensure that the proposal is delivered to the Purchasing Office by the Proposal Close Date and Time. If the Purchasing Office is officially closed on the Proposal Close Date, proposals will be accepted until 3:00 p.m. the next official work day and will be opened at that time.
3. Proposals which are not received by the Purchasing Office prior to the Proposal Close Date and Time will be considered late, regardless of the degree of lateness or the reason related thereto. Late proposals will not be opened.

VII. EVALUATION/AWARD

1. An award will be made to the offeror whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the best proposal, price and other factors considered.
2. The right is reserved, as the interests of the University may require, to reject any or all proposals and to waive any minor informality or irregularity in proposals received. The Purchasing Office reserves the right to request written clarification of any portion of the offeror's response if deemed necessary in order to verify the intent of the offeror.
3. The University reserves the right to make awards on an item by item basis, or on an "all or none" basis, as applicable, if deemed in the best interests of the University.
4. Any award shall be made only by written notification from the Purchasing Office.
5. All proposals and associated documentation received on or before the Proposal Close Date and Time will be considered open records pursuant to Section 610.021 RSMo.

VIII. REMEDIES AND RIGHTS

1. No provision in the contract shall be construed, expressly or impliedly, as a waiver by the University of any existing or future right and/or remedy available by law in the event of any claim by the University of the contractor's default or breach of contract.
2. The contractor understands and agrees that the contract shall constitute an assignment by the contractor to the University of all rights, title, and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of, or in relation to, the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the University.

IX. DELIVERY, INSPECTION, AND ACCEPTANCE

1. Delivery of equipment, supplies, and/or services must be made no later than the time stated in the contract, or within a reasonable period of time if a specific time is not stated.
2. No equipment, supplies, and/or services received pursuant to the contract shall be deemed accepted until the University has had reasonable opportunity to inspect the same.

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3. All equipment, supplies, and/or services which do not comply with the RFP specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
4. The University reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
5. The University's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the University may have.

X. CANCELLATION OF CONTRACT

1. In the event of material breach of contractual obligations by the contractor, the University may cancel the contract. If the contractor fails to cure the breach within an acceptable time frame, or if circumstances demand immediate action, the University will issue a notice of cancellation terminating the contract immediately.
2. If the University cancels the contract for breach, the University reserves the right to obtain such equipment, supplies, and/or services from other sources and charge the contractor for any additional costs incurred as a result thereof, including attorney fees and court costs.
3. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the University for any period in which funds have not been appropriated, and the University shall not be liable for any costs associated with termination caused by lack of appropriations.

XI. WARRANTY

1. The contractor expressly warrants that all equipment, supplies, and/or services provided will (1) conform to each and every specification, drawing, sample or other description provided as part of the RFP, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
2. Such warranty shall survive delivery and shall not be deemed waived either by reason of the University's acceptance of, or payment for, said equipment, supplies, and/or services.

XII. APPLICABLE LAWS AND REGULATIONS

1. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
2. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provision shall be void and unenforceable. The balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the University.
3. The contractor must be registered with and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies as may be required by law or regulation.
4. The contractor must file and pay in a timely manner all Missouri sales, withholding, corporate and any other required Missouri taxes.

XIII. INVOICING AND PAYMENT

1. Payment for all equipment, supplies, and/or services required herein will be made in arrears.

2. Invoices must be directed to the Purchasing Office and must include the contract number or purchase order number, item number, contract description of supplies or services, sizes, quantities, unit prices, and extended totals.
3. Invoices shall be subject to late payment charges as provided for in Section 34.055 RSMo.
4. The University does not pay state or federal taxes unless otherwise required by law or regulation.
5. The University assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to rejection by the University and shall be returned at the contractor's expense.
6. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the University.

XIV. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

1. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
2. The identification of a person designated to handle affirmative action;
3. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
4. The exclusion of discrimination from all collective bargaining agreements; and
5. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

XV. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors must comply with and be responsible for all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

XVI. REQUIREMENTS FOR PRIME CONTRACTORS AND SUBCONTRACTORS

1. Each prime contractor and subcontractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress, or such form as may hereafter be promulgated in its place, if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, that any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets the requirements of paragraphs (i), (ii), and (iv) of this section.
2. Facilities provided for employees must be provided in such a manner that segregation on the basis of race, color, religion, or national origin cannot result.