

State of Iowa, Board of Regents Standard Terms and Conditions

- 1. Supplier's Responsibility.** Supplier shall obtain all necessary permits and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property to protect them from damage, injury, or loss.
- 2. Indemnification.** To the fullest extent allowed by law, Supplier agrees to indemnify and hold harmless the University of Iowa, Iowa State University, University of Northern Iowa, State of Iowa and the State of Iowa, Board of Regents and their agents and employees from and against all claims or losses including reasonable attorneys' fees, arising out of or resulting from the negligence or omissions of the Supplier, its partners, directors, officers, employees, licensees, subcontractors or agents, in the provision of products and services under this contract.
- 3. Immunity from Liability.** Every person who is a party to this Agreement is hereby notified and agrees that the University of Iowa, Iowa State University, University of Northern Iowa, State of Iowa and the State of Iowa, Board of Regents, and its agents, successors, and assigns are immune from liability and suit for or from Supplier's activities involving third parties and arising from this Agreement.
- 4. Guarantee.** In filling this order, Supplier warrants and guarantees to Buyer that the articles are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; and the Anti-Kickback Act of 1986.
- 5. Subcontractors.**
 - a. Supplier shall be responsible for the acts and performance of any subcontractor that Supplier may engage to fulfill any contractual obligations with the Buyer. Supplier shall be responsible for payment to all subcontractors and suppliers.
 - b. All services provided for Supplier by a subcontractor shall be pursuant to an appropriate agreement between Supplier and subcontractor. The agreement shall contain provisions that (1) preserve and protect the rights of the Buyer, and (2) require services be performed in accordance with the requirements of the contractual agreement.
 - c. Supplier is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under any resultant agreement must be acceptable to the Buyer.
- 6. Nondiscrimination.** Supplier is subject to and must comply with provisions of the State of Iowa, Board of Regents Equal Opportunity Policy and applicable state and federal antidiscrimination laws, including the requirements set forth in 41 C.F.R. Section 60-1.4(b), which is incorporated herein by reference.
- 7. Severability of the Contract.** In the event any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this agreement, but this agreement shall be construed as if such invalid or unenforceable provision had never been contained. Further, in the event that any provision of this agreement shall be held to be unenforceable by virtue of its scope, but may be made enforceable by a limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the laws of the jurisdiction in which enforcement is sought.
- 8. Public Records.** The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.
- 9. Clean Air and Water Certification.** Supplier certifies by filling this order, that its facility(s) is not on the Environmental Protection Agency (EPA) List of violating Facilities. Supplier will

immediately notify Buyer of the receipt of any communication indicating that any of Supplier's facilities are under consideration to be listed on the EPA List of Violating Facilities

- 10. Debarred, Suspended, and Ineligible Status.** Supplier certifies that it has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Supplier will immediately notify Buyer if Supplier is placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors.
- 11. Termination – Non-appropriation of Funds.** Notwithstanding any other provisions, if funds anticipated for the continued fulfillment of the resulting agreement are at any time not forthcoming or insufficient, either through the failure of the Iowa Legislature or the Federal government to provide funds or alteration of the program under which funds were provided, then the Buyer shall have the right to terminate the agreement without penalty by giving not less than thirty (30) days written notice documenting lack of funding.
- 12. Remedies upon Default.** In any case where the Supplier has failed to deliver services or has delivered non-conforming services, the University shall provide a 10 day right to cure notice. The University may, within its sole discretion, accept or reject any or all proposed cure actions. If after reasonable notice the Supplier continues to be in default, the University may, within its sole discretion, terminate the Agreement without any further obligation and procure substitute services from another source and charge the difference between the contracted price and the market price to the defaulting Supplier.
- 13. Responsibility for Those Performing the Work.**
 - a. Supplier shall be responsible for the acts and omissions of all Supplier's employees and all subcontractors, their agents and employees, and all other persons under contract with Supplier, while performing the duties and responsibilities associated with this agreement.
 - b. Supplier shall at all times enforce strict discipline and good order among Supplier's employees and shall not employ any unfit person or anyone not skilled in the task assigned.
 - c. Incompetent or incorrigible employees shall be dismissed from the project by Supplier, when so determined by the Buyer. Dismissed individuals shall be prohibited from being employed or utilized by Supplier as part of the services Supplier provides to the Buyer without the written consent of the Buyer.
- 14. Laws.** Terms and provisions of this proposal and any agreement resulting from this proposal shall be construed in accordance with the laws of the State of Iowa, and any and all litigation or actions commenced in connection with this proposal or agreement resulting from this proposal shall be instituted in the appropriate courts of the State of Iowa.
- 15. Use of Name or Intellectual Property.** Supplier agrees it will not use the name or any intellectual property, including but not limited to, any University trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific institution and the Buyer.
- 16. FORCE MAJEURE.** Subsequent to acceptance by the Buyer, neither party shall be liable for damages due to: lightning, fire, explosion, pest damage, strikes or labor disputes, floods, acts of God, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel, or energy shortages, acts or omissions of communications carriers, unauthorized use of the products, or other causes beyond the party's reasonable control whether or not similar to the foregoing.
- 17. Right to Retention.** The Buyer may withhold from payment to Supplier, in such an amount or amounts as may be necessary to cover:
 - a. Payments that may be earned or due for justified third party claims associated with labor, services, equipment, or materials furnished and/or
 - b. For product or service not provided or not remedied/cured.

- 18. Failure to Enforce.** The Buyer shall not be required to enforce any right or remedy available under the contract, however, if the Buyer elects to waive a right or remedy under this contract, the Buyer shall not be precluded from asserting said right or remedy thereafter.
- 19. Performance Bond.** Buyer reserves the right to require a performance bond or irrevocable letter of credit from Supplier for the full value of the equipment and/or service to be provided. This bond or letter shall apply for the entire life of the agreement. If Supplier refuses to provide a performance bond or letter of credit, Buyer may award the contract to another Supplier without penalty to Buyer. In the event of contract breach or nonperformance by Supplier, Buyer may file against the performance bond or letter of credit to collect liquidated damages. The surety on any bond furnished shall be a surety Supplier duly authorized to do business in the State of Iowa, and said bond shall be countersigned by an Iowa Resident Agent. Attorneys-in-fact who sign surety bonds must file with each bond a certified and effectively dated copy of their power of attorney
- 20. Access to Supplier Records/Audits.** Supplier shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation relating to the goods and services furnished during the term of this contract and for a period of five (5) years thereafter, unless required to retain for a longer period by state or federal statute. The Buyer reserves the right to audit such records and employ the Auditor of the State of Iowa or any other auditor the Buyer deems appropriate to perform an audit of Supplier records. Should such audit disclose incorrect billings or improprieties, the Buyer reserves the right to charge Supplier for the cost of the audit and pursue appropriate reimbursement. Evidence of criminal intent will be turned over to the proper authority.
- 21. Certification Regarding Sales and Use Tax.** By executing this agreement the Supplier certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Code of Iowa §§ 432; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in the Code of Iowa §§ 423.1(42) & (43). The Supplier also acknowledges that the Buyer may declare the agreement void if the above certification is false. The Supplier also understands that fraudulent certification may result in the Buyer or its representative filing for damages for breach of contract.
- 22. Code of Fair Practice.** Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender identification, marital status, national origin, sex, age, physical or mental disability, or status as a U.S. veteran. Supplier shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, color, religion, sexual orientation, gender identification, marital status, national origin, sex, age, status as a U.S. veteran or physical or mental disability, except where it relates to a bona fide occupational qualification. In performance of this contract, Supplier shall comply with provisions stipulated in Executive Order 11246, or amended by executive order 11375.
- a. In the event of Supplier's noncompliance with the above nondiscrimination clause of this contract or with any of the aforesaid regulations, this agreement may be canceled, terminated, or suspended in whole in part and Supplier may be declared ineligible for further agreements with the Buyer or other affiliated institutions. In addition the Buyer may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa.
- 23. Iowa Preference Law.**
- a. Preference shall be given to purchasing products produced within the State of Iowa, when they are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states, according to Code of Iowa §§73.1.
 - b. Preference shall be given to purchasing from Iowa based businesses if the offers submitted are comparable in price to those submitted by other suppliers and meet the required specifications, according to the Code of Iowa §§73.1.

- 24. Gratuities.** The laws of the State of Iowa provide that it is a criminal offense to offer, promise or give anything of value or benefit to a state employee with the intent to influence that employee's acts, opinion, judgment, or exercise of discretion with respect to that employee's duties. Evidence of violation of this statute will be turned over to the proper prosecuting attorney.
- 25. Most Favored Nation.** The selected Supplier represents that the terms, conditions and prices established under the subsequent contract resulting from this Request for Proposal Number XXXXX.XX are equal to or better than those offered to other institutions, comparable universities, teaching hospitals, colleges, and/or community colleges. If during the term of the agreement, the selected Supplier offers more favorable terms, conditions or prices to another institution, comparable universities, teaching hospitals, colleges, and/or community colleges, the selected Supplier agrees to notify the Buyer. The contract resulting from this Request for Proposal shall be amended to reflect the more favorable terms, conditions or prices.
- 26. Targeted Small Business.** The Buyer is committed to the development of Targeted Small Businesses, a State of Iowa program. If subcontracting is necessary, the contractor will make every effort to use Targeted Small Businesses in the performance of this contract. A report will be required at the completion of the contract indicating the extent of Targeted Small Businesses participation. A description of the Supplier's expected efforts to solicit Targeted Small Businesses participation should be enclosed with the proposal.
- 27. Trade Secret or Proprietary Information Shall Be Handled as Follows.** The laws of the State of Iowa require that at the conclusion of the selection process, the contents of all proposals will be placed in the public domain and be open to inspection by interested parties. Trade secrets or proprietary information that are recognized as such, and are protected by Iowa law may be withheld, if clearly identified as such in the proposal unless disclosure is required by a court order.

Failure to list all proprietary sections of the submitted proposal in the space provided on the Form of Proposal shall relieve Buyer and its personnel from any responsibility, should such information be accidentally released or viewed by a competitor or the public.

- 28. Anti-Collusion.** The submittal of a proposal constitutes agreement that Supplier has not divulged the proposal to any other potential firm, nor has colluded with any other firm in developing a response to this RFP.
- 29. Confidentiality and Restrictions on Communications.** Until the Effective Date of an agreement pursuant to this Request for Proposal, this Request for Proposal, any responses and other related documents, including but not limited to, attachments, appendices, and exhibits, shall be marked and treated as CONFIDENTIAL, as provided for preliminary correspondence under State of Iowa law. Suppliers should not communicate about the subject of the Request for Proposal with any administrator, faculty, or staff of the Buyer with the exception of the official Purchasing Department representative for this RFP.
- 30. Competitive Negotiation.** It is the intention of the Buyer to enter into competitive negotiations with the Supplier selected as a result of the Request for Proposal process. Suppliers selected to participate in negotiations may be given an opportunity to submit a Best-and-Final offer to the Buyer.
- 31. Termination.** If Supplier is adjudged bankrupt or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of Supplier's insolvency or if Supplier repeatedly refuses or fails to supply enough equipment, employees or management staff, or is otherwise guilty of a substantial violation of the contractual documents, then the Buyer may, after giving Supplier written notice, terminate this agreement, without penalty to the Buyer.

The Buyer may terminate this contract at any time that Supplier fails to carry out its provisions or to make substantial progress under the notice and cure provisions specified in this contract.

With the mutual agreement of both parties, upon receipt and acceptance of not less than thirty (30) days written notice, the contract may be terminated on an agreed date prior to the end of the contract period without penalty to either party.

- 32. Assignment.** All obligations hereunder, including monies due and owing, shall not be assigned to a third party without the prior written consent of both parties hereto.

This agreement (including any future amendments incorporated into the agreement) may not be assigned, transferred, sold, or subcontracted by Supplier without the prior written consent of the Buyer. Should Supplier be purchased (in whole or in part) by another organization or should Supplier wish to assign, transfer, or subcontract the Agreement to another Supplier, the Buyer shall have the right to terminate the Agreement upon reasonable written notification, without penalty to the Buyer.

- 33. Taxes.** The Buyer Institutions are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Supplier's employee's wages. The Buyer Institutions are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request.

- 34. Supplier Rights Assignments-Antitrust Claims.** For good cause and as consideration for executing this agreement, Supplier, through its duly authorize agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of this agreement.

- 35. Additional Documents to the Contract.** Both parties agree to execute and deliver such additional and further documents and instruments as may be necessary or appropriate to carry out the intents and purposes of this agreement.

- 36. Amendments to the Contract.** This contract shall not be changed, modified, altered, or amended in any respect without the mutual consent of the parties hereto, which consent shall be evidenced by a written amendment to the agreement executed by both parties.

- 37. Conflict of Interest.** Should Contractor, Contractor's spouse or minor child be a paid employee of the University or any other Iowa Regent Institution or State of Iowa Agency, Contractor will be considered a "conflict of interest vendor." In addition, should any individual, their spouse or minor child, who is a paid employee of the University or any other Regent institution or State of Iowa Agency, also be a partner in Contractor's firm or own five percent (5%) or more of Contractor's corporate stock or receive consulting payments, a conflict of interest exists. Whenever Contractor represents a conflict of interest, Contractor must have prior approval from the "Board of Regents, State of Iowa" (Regents) to do business with the University. Contact the Purchasing Department at (319) 335-0668 for further information and do not sign this Agreement, until express approval has been given by the Purchasing Department. In addition, the Office of Management and Budget (OMB) Circular A-110 imposes additional requirements on federally funded projects. See Procurement Standards #42 Codes of Conduct, www.whitehouse.gov/omb/circulars/a110/a110.html#42

- 38. American Recovery and Reinvestment Act.** This contract may involve funding under the American Recovery & Reinvestment Act of 2009 ("Recovery Act"). Vendor agrees to (1) comply with all terms and conditions of the Recovery Act (including but not limited to "Buy American", "Wage Rate Requirements" and "Disclosure of Fraud or Misconduct") and (2) provide promptly upon request to the University, the data elements which are required to be reported under Section 1512 of the Recovery Act and the Federal Funding Accountability and Transparency Act ("FFATA"). Please contact the Purchasing Agent to verify if this purchase involves such funding. For details of Recovery Act and FFATA see www.recovery.gov.