

UNIVERSITY OF IOWA
REQUEST FOR PROPOSAL
STANDARD TERMS AND CONDITIONS

Unless a Supplier expressly and specifically states otherwise in its written proposal, submission of a proposal indicates the supplier's acknowledgement and acceptance of the following terms and conditions:

1. University Rights/Obligations

- 1.1. The University of Iowa reserves the right to accept or reject any or all proposals, waive irregularities, to accept any part of a proposal, to withhold the award, and to make no award as is deemed to be in the best interests of the University.
- 1.2. The University will not pay for any information requested herein, nor is it liable for any costs incurred by the Supplier in responding to this request. All proposals submitted become the property of The University and will not be returned to the Supplier.
- 1.3. No responsibility will be attached to any person or the University for premature opening of a proposal not properly identified.

2. Supplier/Proposal Obligations

- 2.1. The successful Supplier must be licensed to do business in the State of Iowa and comply with provisions of Chapter 490 of the Iowa Code.
- 2.2. The proposal constitutes an offer by the Supplier which shall remain open and irrevocable for a period of sixty (60) calendar days from the proposal due date.
- 2.3. The Supplier consents to the University contacting and obtaining any information relevant to this Request for Proposal from the references identified by the Supplier in its proposal or other sources deemed appropriate by the University.
- 2.4. Failure to supply information requested may be cause for rejection of the proposal as non-compliant.
- 2.5. If a proposal is sent by mail, the Supplier should make allowance for the time required for such transmission. The University employee whose duty it is to receive proposals will decide when the specified time has arrived and no proposal received thereafter will be accepted.
- 2.6. Determination of compliance and responsiveness to the requirements of the RFP will be made after a thorough and careful review of the proposals. Public review of the submitted proposals will not be possible until an award has been made and the University has removed any trade secret, confidential or proprietary information, if any, from the proposals.
- 2.7. The contents of the proposal and any clarification thereto submitted by the successful Supplier shall become a part of the contractual obligation incorporated by reference into the ensuing agreement, unless modified by mutual agreement, in writing.
- 2.8. Any and all interpretations, corrections, revisions and amendments shall be issued by the University's Purchasing Department to all holders of proposal documents in the form of written addenda.
- 2.9. Modification or Withdrawal of a Proposal: Submitted proposals may be withdrawn **only** by written notice to the University of Iowa Purchasing Department. Such notice must be received by the University Purchasing Department **prior to the designated date and time for the receipt of proposals**.
- 2.10. Withdrawn proposals may be re-submitted up to the time and date designated for the receipt of proposals provided that they are fully in conformance with the proposal instructions and conditions.

3. Formation of the Agreement

At its option, the University may take either of the following actions to form an agreement between the University and the selected Supplier:

- 3.1. Accept a proposal as submitted by issuing a written notice to the selected Supplier which refers to this Request for Proposal and accepts the proposal received in response to it, or,

3.2. Enter into negotiations with one or more Supplier(s) in an effort to reach a mutually satisfactory written agreement that will be based on this Request for Proposal, the proposal submitted by the Supplier and the associated negotiations.

3.3. Because the University may use alternate 3.2 above, each Supplier should include in its written proposal all requirements, terms or conditions it may have, and should not assume that an opportunity will exist to add or clarify such matters once the proposal is submitted.

4. 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 University shall have the right to terminate the agreement without penalty by giving not less than thirty (30) days written notice documenting lack of funding.

5. Assignment

Any contractual agreement resulting from this Request for Proposal may not be assigned or transferred by the Supplier without prior written consent of the University and the bonding company if appropriate.

6. Indemnification

To the fullest extent allowed by law, Supplier agrees to indemnify and hold harmless the University, the State of Iowa, and the Board of Regents, State of Iowa 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.

7. Code of Fair Practice

The Supplier shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, physical or mental disability. The Supplier shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability except where it relates to a bona fide occupational qualification.

8. Qualifications of Bidder

8.1. The University of Iowa may make such investigations as deemed necessary to determine the ability of the Supplier to provide and perform the specified service stated herein.

8.2. The Supplier shall keep informed of, and shall provide all permits and comply with all applicable laws, ordinances, rules, regulations and orders of the state and federal government, or public bodies having jurisdiction affecting this proposal and the service referenced herein.

9. 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.

10. Iowa Preference Law

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 *Iowa Code* §§73.1.

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 *Iowa Code* §§73.1.

11. 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.

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. **IMPORTANT – Exceptions to Contract Documents**

The Supplier shall clearly state in the submitted proposal any exceptions to, or deviations from the specific RFP Instructions, Specifications, Form of Proposal, Evaluation Criteria, and/or any exceptions to these Terms and Conditions. Such exceptions or deviations will be considered in evaluating the proposals.

Any exceptions must be noted on the Proposal Compliance Form, and returned with the submitted proposal. If additional copies of the Compliance Form are needed, the Supplier may make photocopies.

Suppliers are cautioned that exceptions taken to this Request for Proposal may cause their proposal to be rejected.

14. Insurance Requirements

Without limiting any liabilities or any other obligations of the Supplier, Supplier shall provide certificates of insurance documenting the minimum insurance coverage requirements listed below unless otherwise agreed to in writing. Coverage may be by Supplier's self-insurance plan or with outside insurance providers, all subject to University approval. Such insurance coverage must be maintained until all obligations under the Agreement are satisfied.

14.1. Applicable Workers Compensation insurance to cover liability imposed by Federal and State statutes having jurisdiction over Supplier employees engaged in the performance of the Supplier's service. Employer's Liability insurance of no less than \$500,000 each employee and \$500,000 each accident.

14.2. Commercial General Liability insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000) per occurrence. This policy shall include coverage for bodily injury and property damage, including completed operations, personal injury, coverage for contractual employees, blanket contractual and products and completed operations. Policy shall contain a severability of interests provision.

14.3. Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) with respect to Supplier's owned, non-owned, hired, or borrowed vehicles, assigned to or used in performance of this agreement.

14.4. Umbrella Liability insurance with a minimum limit of \$1,000,000 per occurrence and shall apply to all underlying and primary liability coverages required above.

14.5. Errors and Omissions (Professional Services Liability) insurance with a minimum limit of \$1,000,000 per claim. The policy shall include coverage for contingent bodily injury liability.

14.6. The Commercial General Liability, Commercial Automobile Liability and Umbrella Liability policies required herein shall be endorsed to include the State of Iowa; University of Iowa; Board of Regents, State of Iowa, their agents, officials, and employees as additional insured.

14.7. Supplier and its insurers providing the required coverages shall waive all rights of subrogation or recovery against the State of Iowa; University of Iowa; Board of Regents, State of Iowa, their agents, officials and employees.

14.8. All required insurance policies shall be issued by reputable insurance companies duly authorized to

engage in the insurance business in the State of Iowa, with an A.M. Best's rating of A-, VII or better. These policies shall be primary coverage. Certificates shall specify name of the project and provide that no less than 30 days notice of non-renewal, cancellation, or material change shall be given to the University of Iowa.

14.9. Two (2) Certificates of Insurance showing Supplier's current coverages and limits must be submitted with the Supplier proposal. Prior to a signed Agreement, Supplier must procure required insurance and provide University with two (2) Certificates of Insurance. Certificates must reference RFP #XXXXX.XX. Supplier's proposal must include the cost of the required insurance.

14.10. Failure on the part of the Supplier to procure or maintain required insurance shall constitute a material breach of contract upon which The University may immediately terminate an Agreement, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all moneys so paid by The University shall be repaid by the Supplier to The University upon demand, or The University may offset the cost of the premiums against any moneys due to Supplier.

14.11. The University reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

14.12. The University reserves the right to waive or reduce the insurance requirements at the University's sole discretion.

15. Taxes

15.1. The University of Iowa is exempt from all excise, state, local and use taxes for services rendered, equipment or parts supplied for this contract. Exemption certificates will be furnished upon request.

15.2. Certification regarding sales and use tax: By executing this Contract 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 Iowa Code chapter 432; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Supplier also acknowledges that the University of Iowa may declare the Contract void if the above certification is false. The Supplier also understands that fraudulent certification may result in the University of Iowa or its representative filing for damages for breach of contract.

16. Trade Secret or Proprietary Information Shall Be Handled as Follows:

16.1. 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.

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

17. Targeted Small Business

The University 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.

18. Miscellaneous Terms and Conditions

No individual, department, school, college or office at the University of Iowa has the authority to solicit or receive official proposals other than the Purchasing Department. All solicitation is performed under the direct supervision of the Director of Business Services and in accordance with University, Regent, State and Federal laws, policies, procedures and guidelines.

18.1. 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 contract, 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 University of Iowa. The contract resulting from this Request for Proposal shall be amended to reflect the more favorable terms, conditions, or prices.

18.2. The University reserves the right to conduct discussions with Suppliers, and to accept revisions of proposals, and to negotiate price changes. Any person, firm, corporation or association submitting a proposal accepts all the terms, conditions and requirements in this Request for Proposal.

18.3. The successful Supplier agrees it will not use the name or intellectual property, including but not limited to, University trademarks in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the University.

18.4. The successful Supplier shall not remove any records from the University of Iowa. This includes but is not limited to, paper documents, microfiche, microfilm, or any electronic media.

19. University of Iowa Vendor Statement of Aspiration

The University of Iowa has a deep respect for the intrinsic value of each human being, and a steadfast commitment to promoting and protecting human rights on its Iowa City campus, in its surrounding community, and beyond. For this reason, the University shall *aspire to* engage in business practices that effect positive change in human working conditions domestically and abroad.

20. 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

21. Export Control

Supplier acknowledges that a foreign national(s) may use the device/technology/and or data you propose, at the University.

Supplier shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions/exceptions, Supplier shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

Prior to disclosing or transferring to University any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Supplier shall notify the University in writing of the nature and extent of the export control. The University shall have the right to decline any such technical data or product utilizing such data. In the event Supplier sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate this Agreement.