

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 Engineering Experiment Station and/or
Texas A&M Transportation Institute, 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 90 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 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.
- 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 vendor to complete delivery in 14 calendar days.
- 3.2 If delay is foreseen, vendor shall give written notice to the Agency. The Agency has the right to extend delivery date if reasons appear valid. 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 vendor.
- 3.3 No substitutions or cancellation permitted without written approval of the Agency 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 vendor'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 vendor. Goods which have been delivered and rejected in whole or in part may, at the Agency's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance. All returns should be processed via direct deposit or check returned to the Agency.

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 substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), Texas Education Code, venue for a state court suit filed against The Texas A&M University System, any member of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or member, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

6. PAYMENT

6.1 Payment will be made upon submittal and approval of a valid invoice. The Agency shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice. A properly submitted invoice will be in accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D. Payments.

6.2 All payments, to the maximum extent practical, shall be made by electronic direct deposit. Vendor is required to complete and submit to the A&M System a Vendor Direct Deposit Authorization form prior to the first payment request.

7. PATENTS OR COPYRIGHTS

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

8. SUPPLIER ASSIGNMENTS

Supplier hereby assigns to Agency 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, TEX. Bus. & Comm. 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 the State of Texas.

9.3 Pursuant to Section 2155.004 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 vendor 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 vendor or any agent, employee, subcontractor, or vendor 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 following section 669.003 of the 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, this agency 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 this agency or other state agency, then Respondent shall provide the following information: relating to contracting with 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 Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.
- 9.10 Vendor 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. Vendor/Vendor 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. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractor through Vendor and the requirement to cooperate is included in any subcontract awards.
- 9.11 By executing this Agreement, vendor and each person signing on behalf of vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- 9.12 To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Vendor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 9.13 Pursuant to Subchapter F, Chapter 2252, Texas Government Code, vendor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. vendor acknowledges this Agreement may be terminated if this certification is inaccurate.
- 9.14 Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 9.15 VENDOR will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- 9.16 VENDOR is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this agreement.

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

- A. Vendor acknowledges that A&M System 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 this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, vendor will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. Vendor acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the vendor agrees that the agreement can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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 SPD 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. DISPUTE RESOLUTION

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this 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 Agency and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to the Risk & Compliance Officer, who shall examine Vendors's claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim. This provision and nothing in this Agreement waives Agency's sovereign immunity to suit or liability and Agency has not waived its right to seek redress in the courts.

14. NON-DISCRIMINATION

The Seller 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 Seller's employment practices; (2) the performance of the Seller's obligations under the Agreement. In performing its obligations under the Agreement, Seller shall be subject to and shall comply with all currently effective or subsequently promulgated polices regarding non-discrimination issued by either the Agency or The Texas A&M University System.

15. INDEPENDENT VENDOR STATUS

Seller agrees that Seller and Seller's employees and agents have no employer-employee relationship with the Agency. The Agency shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will the Agency furnish any medical or retirement benefits or any paid vacation or sick leave.

Vendor or Vendor's employees, representatives, agents and any subcontractor shall serve as an independent Vendor in providing the services under this Agreement. Vendor or Vendor's employees, representatives, agents and any subcontractor shall not be employees of the Agency. Should Vendor subcontract any of the services required in this Agreement, Vendor expressly understands and acknowledges that in entering into such subcontract(s), the Agency is in no manner liable to any subcontract of Vendor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Agreement.

16. TERMINATION

16.1 Convenience

The Agency reserves the right to terminate this Agreement at any time, in whole or in part and without cost or penalty, by providing thirty (30) calendar days' advance written notice to Vendor, if Agency determines that such termination is in the best interest of the Agency. 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. Agency shall be liable only for payments limited to the portion of work Agency authorized in writing and which Vendor has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.

16.2 Cause/Default

In the event of substantial failure by Vendor to perform in accordance with the terms of this Agreement, the Agency may terminate this 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.

16.3 Rights upon Termination or Expiration

In the event that the 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 the 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 this Agreement, or at the Agency 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.

17. SEVERABILITY CLAUSE

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

18. FORCE MAJEURE

Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this 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).

19. NO WAIVER

Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The Agency does not waive any privileges, rights, defenses, or immunities available to the Agency by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement.

20. ABANDONMENT OR DEFAULT

If the Vendor defaults on the Agreement, the Agency reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. In the event of abandonment or default, Vendor will be responsible for paying damages to the Agency including but not limited to re-procurement costs, and any consequential damages to the State of Texas or the Agency resulting from Vendor's non-performance. The defaulting Vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

21. EXPORT CONTROL

Vendor 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. **Vendor 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. Vendor 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, Vendor 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.

22. INFORMATION SECURITY

Pursuant to Title 1, Chapter 202, §202.77 of the Texas Administrative Code, Vendor hereby acknowledges responsibility to comply with all applicable the 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 Section 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 Vendor should obtain or be granted access to Confidential and/or Mission Critical Information of the Agency, Vendor will keep and protect the Agency information confidential to no less than the same degree of care as required by the Agency policies, rules and procedures. At the expiration or early termination of this Agreement, Vendor agrees to return all the Agency information or agrees to provide adequate certification that the Agency information has been destroyed. Vendor, its employees, agents, Vendors, and subcontractor shall use the Agency information solely in connection with performance by Vendor of the services provided to the Agency pursuant to this Agreement, and for no other purpose. Should Vendor, its employees, agents, Vendors, or subcontractor acquire other Agency information during the course of this Agreement, it shall not be used for Vendor's own purposes or divulged to third parties. Vendor shall comply with all terms and conditions of any the Agency non-disclosure agreement applicable to this Agreement. Both parties shall each provide contact information for specific individuals. The designated contact for the Agency is listed on the front of this purchase order. Should the designated contact 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 Vendor have a need to access the Agency information, that request shall be directed to the Agency designated contact. Further, Vendor is responsible for reporting all security breaches directly to the Agency.

23. SUSTAINABILITY

The Agency is committed to campus 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 Vendor's assistance in campus sustainability initiatives by informing in any bid response, or other discussions, of Vendor's sustainability practices or environmentally sustainable product offerings. For example, alternative products available from VENDOR which may be recyclable or reusable, end of life (obsolescence) return of equipment to Vendor, energy-saving devices, return to Vendor

24. DECEPTIVE TRADE PRACTICES UNLAWFUL

Pursuant to Section 17.46(b)(27) of the Texas Government Code, it is unlawful to take advantage of a disaster declared by the governor under Chapter 418 of the Texas Government Code by selling or leasing at, or making a demand for, an exorbitant or excessive price for fuel, food, medicine or another necessity.

25. VENDOR CERTIFICATION REGARDING BOYCOTTING ISRAEL

Pursuant to Chapter 2271, Texas Government Code, Vendor certifies 1) Vendor does not currently boycott Israel and 2) will not boycott Israel during the Term of any ensuing purchase order or contract. Vendor acknowledges the purchase order or contract with Texas A&M may be terminated and payment withheld if this certification is inaccurate.

26. VENDOR CERTIFICATION REGARDING CERTAIN COUNTRIES AND ORGANIZATIONS

Pursuant to Chapter 2272, Texas Government Code, Vendor certifies Vendor is not engaged in business with Sudan, Iran or a foreign terrorist organization. Vendor acknowledges any purchase order or contract with Texas A&M may be terminated and payment withheld if this certification is inaccurate.

27. CERTIFICATION REGARDING PRODUCTS FROM THE GAZA STRIP

Vendor represents and warrants that the goods it provides to Agency under this Agreement are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

28. PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING

Pursuant to Section 2155.0061, Texas Government Code, Vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

29. NOT ELIGIBLE FOR REHIRE

Vendor is responsible for ensuring that its employees involved in any work being performed for Agency under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event Agency becomes aware that Vendor has a NEFR

Employee involved in any work being performed under this Agreement, Agency will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by Agency.

30. CLOUD COMPUTING SERVICES (TxRAMP)

Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

31. EXCESS OBLIGATIONS PROHIBITED

This contract is subject to termination or cancellation, without penalty to the Agency, either in whole or in part, subject to the availability of state funds.

32. GOVERNING LAW AND VENUE

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Brazos County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

33. NO CONFLICTS OF INTEREST

Vendor certifies, to the best of their knowledge and belief, that no member of the A&M SYSTEM Board of Regents, nor any employee of Agency or A&M SYSTEM, has a direct or indirect financial interest in Vendor or in the transaction that is the subject of the Agreement.

FEDERALLY FUNDED PURCHASES

The Vendor shall comply with all federal regulations relating to the performance of services or deliverables provided for in this Purchase Order. In addition, Vendor agrees to flow-down all applicable clauses to lower-tier Vendors.

FEDERAL REQUIREMENTS ON ALL PURCHASES

- Security Requirements (applicable if access to classified material is involved) FAR 52.204-2
- Equal Employment Opportunity - Executive Order 11246 as amended by Executive Order 11375 and supplemented by 41CFR part 60
- Copeland Anti-kickback Act (for construction and repair [18 USC 874](#) as supplemented by Department of Labor regulations 29 CFR part 3
- USC 874 as supplemented by Department of Labor regulations 29 CFR part 3
- [Davis-Bacon Act](#), as amended 40 USC 276a to a-7 and supplemented by Department of Labor regulations 29 CFR part 5
- Contract Work Hours and Safety Standards Act 40 USC 327-333 and supplemented by Department of Labor regulations 29 CFR part 5.
- Rights to Inventions Made under a Contract or Agreement - 37 CFR part 401
- Preference for Privately Owned U.S.-Flag Commercial Vessels - FAR 52.247-64
- Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 52.223-3
- Filing of Patent Applications – Classified Subject Matter FAR 52.227-10
- Patents Rights – Ownership by Vendor and Government FAR 52.227-11 and 52.227.13
- Rights in Data – General FAR 52.227-14
- Authorization and Consent Patents and Copyrights 52.227-1
- Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2
- Buy American Act – Supplies FAR 52.225-1-3
- Government Property FAR 52.245-5
- Notice of Radioactive Materials FAR 52.223-7 - The Vendor shall notify the Agency or designee, in writing, 5*days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Vendor which will put users of the items on notice as to the hazards involved (OMB No.9000-0107).
- Privacy Act FAR 52.224-2

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$2,500

- Restrictions on Certain Foreign Purchases FAR 52.225-13
- McNamara –O’Hara Service Contracts Act 41 U.S.C. 351 *et seq.*

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$10,000

- Prohibition of Segregated Facilities FAR 52.222-21
- Equal Opportunity FAR 52.222-26

- Affirmative Action for Workers with Disabilities FAR 52.222-36 (a) Equal opportunity clause. The Vendor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Vendor to employ and advance in employment qualified individuals with disabilities.
 - (b) Subcontracts. The Vendor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subVendor or vendor. The Vendor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.
- Walsh-Healy Public Contracts Act FAR 52.222.20

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$25,000

- Equal Opportunity for Veterans FAR 52.222-35 (a) *Definitions*. As used in this clause- "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.
 - (b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.
 - (c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.
- Employment Reports on Special Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-37
- Debarment and Suspension Executive Orders 12549 and 12689

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$100,000

- Anti-kickback procedures FAR 52.203-7
- Restrictions on Vendor Sales to the Government FAR 52-203.6
- Audit and Records Negotiation (if document was entered by negotiation) FAR52.215.2
- Integrity of Unit Prices FAR 52.215-14
- Contract Work Hours and Safety Standards Act FAR 522.222-4
- Clean Air and Water FAR 52.223-2
- Clean Air Act (42 U.S.C. 7401 et seq.)
- Federal Water Pollution Control Act 33 U.S.C. 1251, et seq.
- Drug-Free Workplace FAR 52.223-6
- Byrd Anti-Lobbying Amendment 31 U.S.C. 1352
- Utilization of Small Business Concerns FAR 52.219-8
- Preference for US Flag Carriers FAR 52.247-63
- Toxic Chemical Release Reporting 40 CFR 372

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$500,000

- Cost Accounting Standards – Educational Institutions FAR 52.230-5
- Administration of Cost Accounting Standards FAR 52.230-6
- Vendor Cost or Pricing Data – Modifications FAR 52.215-13

FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$650,000

- Small Business and Small Disadvantaged Business Subcontracting Plans FAR 52.219-9
- Liquidated Damages – Subcontracting Plan FAR 52.219-16

AFFIRMATIVE ACTION

- The Vendor shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Vendor agrees to adhere to the principles set forth in Executive Orders 13672 and 11375, Section 503 of the Rehabilitation Act of 1973, and USC 2012 (Disabled Veterans and Veterans of the Vietnam Era), and to undertake specifically: to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy in both English and Spanish to all persons concerned within his company, and to discuss with THE AGENCY the policies and practices relating to the Vendor's Affirmative Action program.

FEDERAL EQUAL OPPORTUNITY

- The Vendor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Vendors to employ and advance in employment qualified individuals with disabilities.