

STANDARD TERMS AND CONDITIONS

- 1.0 **SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The UW-Madison shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates which may result in rejection of their bid/proposal.
- 2.0 **DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. Each deviation and exception must be identified by the section, page and paragraph to which it applies. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidder/proposer shall be held liable.
- 3.0 **QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the University.
- 4.0 **QUANTITIES:** The quantities shown on this request are based on estimated needs. The University reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 **PRICING AND DISCOUNT:** The University qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
 - 5.1 Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
 - 5.2 Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the University thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the Contractor which are demonstrated to be industry-wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
 - 5.3 In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 6.0 **UNFAIR SALES ACT:** Prices quoted to the University are not governed by the Wisconsin Unfair Sales Act.
- 7.0 **ACCEPTANCE-REJECTION:** The University reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interest of the State of Wisconsin.
- 8.0 **ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the Contractor by University. No other purchase orders are authorized.
- 9.0 **PAYMENT TERMS AND INVOICING:** The University normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
 - 9.1 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing. Invoice payment processing address is shown on the upper left corner of the purchase order. Send invoices to the Accounts Payable address on the purchase order. Do not send invoices to the ship to address.
 - 9.2 Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.
 - 9.3 Bidders/proposers shall include discounts for early payment (See 5.3) as a percent reduction of invoice. Invoice discounts shall be determined, where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
 - 9.4 Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.
 - 9.5 Payment terms and invoicing for purchasing card will be made in accordance with the purchasing card contact.

- 10.0 **TAXES:** The University, an agency of the State of Wisconsin, is exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The Department of Revenue of the State of Wisconsin does not issue a tax exempt number; however, University is exempt from State of Wisconsin sales or use tax under s.77.54(9a)(a). Registration No. 39-73-1021-K, was issued by the Internal Revenue Service to authorize tax-free transactions under Chapter 32 of the Internal Revenue Code.
- 10.1 The University, an agency of the State of Wisconsin, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The University may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 11.0 **GUARANTEED DELIVERY:** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 12.0 **ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the University.
- 13.0 **APPLICABLE LAW AND COMPLIANCE:** This Agreement shall be construed under the laws of the State of Wisconsin. Jurisdiction and venue for any disputes under this Agreement shall be in Dane County, Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin shall not enter into a contract with a vendor, and reserves the right to cancel any existing contract, if the vendor or contractor has not met or complied with the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.
- 14.0 **ANTITRUST ASSIGNMENT:** The Contractor and the University recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the Contractor hereby assigns to the University any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 15.0 **ASSIGNMENT:** No right or duty in whole or in part of the Contractor under this contract may be assigned or delegated without the prior written consent of the University.
- 16.0 **DISPUTES:** Disputes should be addressed to the University Purchasing Office, Director of Purchasing Services, 21 N Park St, Suite 6101, Madison, WI 53715 1218.
- 17.0 **NONDISCRIMINATION/ AFFIRMATIVE ACTION:**
- 17.1 In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wisconsin Statutes, sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities.
- 17.2 Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Contractor. An exemption occurs from this requirement if the Contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the Contractor must submit the plan to the University for approval. Instructions on preparing a plan:
<http://www.bussvc.wisc.edu/purch/vendorinfo/affaction/affiractioninfo.html>
- 17.3 The Contractor agrees to post in a conspicuous place, available for employees and applicants for employment, a notice to be provided by the University that sets forth the provisions of the State of Wisconsin nondiscrimination law.
- 17.4 Failure to comply with the conditions of this clause may result in the Contractor's becoming declared an "ineligible" Contractor, termination of the contract, or withholding of payment.
- 17.5 To the extent required by law, 41 CFR 60-1.4(a) and (b) are incorporated by reference in these Standard Terms and Conditions. Additionally, the Contractor certifies compliance with 41 CFR 60-1.8 and does not and will not maintain any facilities provided for employees in a segregated manner. The Contractor further agrees to obtain identical certifications from any subcontractors prior to the award of a subcontract exceeding \$50,000 and will retain such certification for audit purposes.

- 18.0 **PATENT INFRINGEMENT:** The Contractor selling to the University the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The Contractor covenants that it will at its own expense defend every suit which shall be brought against the University (provided that such Contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
- 19.0 **SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the University must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code, Rules of the Industrial Commission on Safety, and all applicable OSHA Standards.
- 20.0 **MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy to UW Safety Department, 30 East Campus Mall, Madison WI 53715-2609.
- 21.0 **WARRANTY:** Unless the equipment manufacturer's standard warranty is greater than one (1) year, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt.
- 22.0 **INSURANCE RESPONSIBILITY:** The Contractor performing services to the University shall:
- 22.1 Maintain worker's compensation insurance as required by Wisconsin Statutes for all employees engaged in the work.
- 22.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- 22.3 The state reserves the right to require higher or lower limits where warranted.
- 22.4 Upon request by the University, the Contractor is required to provide a Certificate of Insurance, from an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of A-, and signed by an authorized agent. A minimum 60 day cancellation notice is desired.
- 23.0 **CANCELLATION:** The University reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, and specifications of this contract.
- 24.0 **VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
- 25.0 **OMNIBUS RECONCILIATION ACT:** (Public Law 96-499) To the extent required by law, if this contract is for acquisition of services with a cost or value of \$25,000 or more within any 12-month period, including contracts for both goods and services in which the services component is worth \$25,000 or more within any 12-month period, the Contractor shall in accordance with 42 C.F.R., Part 420, Section 1861 of the Omnibus Reconciliation Act of 1980 (P.L. 96499) and permit the comptroller general of the United States, the United States Department of Health and Human Services, and their duly authorized representatives, access to the Contractor's books, documents and records until the expiration date of four (4) years after the approval of procurement activities.
- 26.0 **PUBLIC RECORDS ACCESS:** It is the intention of University to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.
- 27.0 **PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.
- 27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented by Contractor. All data, documentation, and innovations become the property of the State of Wisconsin.
- 27.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

- 28.0 **DISCLOSURE:** If a state public official (s. 19.42, Wisconsin Statutes), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 E. Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123). State classified and former employees and certain University faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.
- 29.0 **ANTI-KICKBACK ACT of 1986:** (41 USC 51 et. seq): To the extent required by law, the officer or employee responsible for submitting this bid shall certify, in accordance with 48 CFR 52.203-7, to the best of their knowledge, that they have no information concerning the violation of the Anti- Kickback Act in connection with the submitted bid/proposal. Signing the bid/proposal with a false statement shall void the submitted bid/proposal and any resulting contract(s).
- 30.0 **RECYCLED MATERIALS:** The University is required to purchase products incorporating recycled materials whenever technically or economically feasible. Bidders/proposers are encouraged to bid/propose products with recycled content which meet specifications.
- 31.0 **HOLD HARMLESS:** The Contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Contractor, or of any of its Contractors, in prosecuting work under this agreement.
- 32.0 **PROMOTIONAL ADVERTISING/NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies (University) or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the University. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.
- 33.0 **WORK CENTER CRITERIA:** A work center must be certified under s. 16.752, Wisconsin Statutes, and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.
- 34.0 **FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P.O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
- 35.0 **FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
- 36.0 **WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.
- 37.0 **CHILD ABUSE NOTIFICATION:** Contractor, per Executive Order 54, is required to make a report of child abuse or neglect **immediately** if, in the course of service, the Contractor observes or learns of an incident or threat of child abuse or neglect, and the Contractor has reasonable cause to believe that child abuse or neglect has occurred or will occur.
- A report must be made personally or by telephone to UWPD.
- Reports are to be made to: **Emergency Phone Number:** 911.
Non-Emergency Phone Numbers: UW Police Department 608-264-2677.
- 38.0 **RELEASE OF INFORMATION:** Contractor shall not report or release information concerning University of Wisconsin System or its campuses students, employees or customers to third parties without the University's prior written approval. Any such report or release of information shall, at a minimum, comply with those requirements enumerated in the Gramm-Leach-Bliley Act, 15 USC 6801 et seq., University standards for safeguarding such information, and all other applicable laws regarding consumer privacy.