

TERMS AND CONDITIONS:
ITEMS BELOW APPLY TO AND BECOME PART OF BID.
ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. BIDDING REQUIREMENTS:

- 1.1. Bidders 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. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.3. Submit bid on this form. Each bid is to be placed in a separate envelope and properly identified with Bid Invitation No. and Opening Date. Bids must be time stamped at The University of Texas Health Science Center at San Antonio Purchasing Office, located at the Med Centre Plaza, 8431 Fredericksburg Road, Suite #200, San Antonio, TX 78229 on or before opening date and time shown on request form.
- 1.4. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.5. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.6. Bid prices are requested to be firm for UTHSCSA acceptance for 60 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.7. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the UTHSCSA based on an acceptable written reason.
- 1.8. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.9. Bids should give Payee ID Number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of the bid. The Payee ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. If this number is not known complete the following:
Enter Federal Employer's Identification Number: _____
Sole Owner Social Security Number: _____
- 1.10. Consistent and continued tie bidding could cause rejection of bids by the UTHSCSA and/or investigation for antitrust violations.
- 1.11. Inquiries pertaining to RFBs must include the requisition number, class/item codes, and opening date.
- 1.12. Submission of a quotation in response to this RFB indicates bidder's acceptance of the award selection process and criteria.

2. SPECIFICATION:

- 2.1. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under Texas Government Code, Title 10, Subtitle D, Section 2155.067. If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.2. Unless otherwise specified, items shall be new and unused and of current production.
- 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. Samples, when requested, must be furnished free of expense to the University. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.
- 2.5. The University will not be bound by any oral statement or representation contrary to the written specifications of this RFB.
- 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in the RFB.

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3. TIE BIDS:

Awards will be made in accordance with TAC Rule 113.6 (b) (3) and 113.8 (Preferences).

4. DELIVERY:

- 4.1. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Unrealistic delivery promises may cause bid to be disregarded.
- 4.2. If delay is foreseen, vendor shall give written notice to the UTHSCSA and the ordering agency. Vendor must keep the UTHSCSA and ordering agency advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the UTHSCSA to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 4.3. No substitutions permitted without written approval of UTHSCSA.
- 4.4. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.
- 4.5. The Texas Hazard Communication Act (Article 5182b, VTCS) requires chemical manufacturers and distributors to provide Material Safety Data Sheets (MSDSs) for hazardous materials sold. Products covered by this Act must be accompanied by a MSDS and such products must be labeled in compliance with the law. For any product not covered under the Act, a statement of exemption must be provided.

5. AWARD OF CONTRACT:

A response to this RFB is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through an open market purchase order.

The contract shall be governed, construed, and interpreted under the laws of the State of Texas.

Best Value: The bidder awarded an order under this RFB will be that bidder whose quotation, as presented in their response to this RFB, provides best value to UTHSCSA. In addition to price, the factors set forth in Section 51.9335 Education Code, will be considered in determining an award. The University reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the University. Any contract may also be extended up to three months at the sole discretion of the University.

The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, and 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Bexar County, Texas.

Cash discounts will not be considered in determining award, unless otherwise indicated per the bid documents.

6. PAYMENT:

Vendor shall submit an itemized invoice showing the Purchase Order number. The UTHSCSA will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods and services and an uncontested invoice.

7. PATENTS OR COPYRIGHTS:

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

8. VENDOR ASSIGNMENTS:

Vendor hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

9. BIDDER AFFIRMATION: By signature hereon affixed, the bidder hereby certifies that:

- 9.1. The bidder 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. Neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such entity 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.
- 9.3. Pursuant to Section 2155.004, Government Code, the bidder has not received compensation for participation in the preparation of the specifications for this RFB.
- 9.4. Pursuant to Section 231.006 (d), Family Code, re: child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

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- 9.5. Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or 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.
- 9.6. Indemnification
- A. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY.
- B. IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 9.7. Bidder 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. Bidder certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:
- Name of Former Executive: _____
- Name of State Agency: _____
- Date of Separation from State Agency: _____
- Position with Bidder: _____
- Date of Employment with Bidder: _____
- 9.9. Bidder agrees to comply with Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.
- 9.10. Contractor 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. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 9.11. The UTHSCSA is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: <http://www.whitehouse.gov/news/orders/>.
- 9.12. By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Bidder as defined in TAC Rule 113.2 (68).
10. Pursuant to Section 231.006 (c), Family Code, bid must include Names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the bid. Attach Name & Social Security Numbers for each person. This information must be provided prior to contract award.

Name: _____

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Social Security Number:

Name:

Social Security Number:

Name:

Social Security Number:

11. NOTE TO BIDDER:

Any terms and conditions attached to a bid will not be considered unless specifically referred to on this bid form and may result in disqualification of the bid.

12. The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used by the UTHSCSA and the contractor to attempt to resolve all disputes arising under this contract.

13. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

14. [OPTIONAL: TECHNOLOGY ACCESS CLAUSE: The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the qualified ordering entity that the technology provided to the qualified ordering entity for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- a) Providing equivalent access for effective use by both visual and non visual means;
- b) Presenting information, including prompts used for interactive communications, in formats intended for both visual and non visual use; and
- c) Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays and customizable display appearance.

14.1 "Exemption Declaration: Pursuant to the provisions of the Texas Government Code, Chapter 2157.005(d) this requirement is for the purchase of a wireless communication device to be used by peace officers, firefighters, and other emergency response personnel to respond to a public safety emergency. The provisions of the Technology Access Clause do not apply."