

MINIMUM GENERAL BID TERMS & CONDITIONS
The University of Memphis

1. PREPARATION AND SUBMISSION OF BID.

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
- b. **BID SUBMITTAL / SIGNATURE:** Bid shall give the full name and business address of the bidder. If the bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink by the bidder's authorized agent. Unsigned bids will be rejected. Submittal of bids through University's Tigerbuy Eprocurement system is the preferred method, in accordance with instructions detailed in the bid. If submitted by other means, bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the University, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the University. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
- c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
- d. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price.
- f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the University's RFQ Coordinator whenever specifications/procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the RFQ Coordinator at least three (3) working days prior to the bid opening. The articles on which the bids are submitted must be equal or superior to that specified. **Informative and Descriptive Literature:** The bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced, to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
- g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon vendor's request within ten (10) days of bid opening, be returned at the bidder's expense. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
- h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.
- j. New materials and supplies must be delivered unless otherwise specifically stated in the bid.
- k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
- l. **Bond requirements.** The University reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the University. Any bond requirement should be included in the bid, itemized separately.
- m. Only bids submitted on bid forms furnished by the University will be considered, except that the University reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$50,000 if received by the deadline and confirmed in writing within five (5) days on University forms.
- n. By signing this bid where indicated, the bidder agrees to strictly abide by all state and federal statutes and regulations. The bidder further certifies that this bid is made without collusion or fraud.
- o. **Failure to Bid/Error in Bid.** Failure to bid without advising the University that future invitations for bids are desirable may result in removal from University's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the bidder.

2. INSPECTION. All bids will be publicly opened and are subject to public inspection after the award. Bidders may be present at bid opening.

3. ACCEPTANCE AND AWARD. The University reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the University of Memphis.

- a. Contracts and purchases will be made with the lowest, responsible, qualified bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the University, cash discount offered and the delivery terms will be taken into consideration.
- b. The University reserves the right to order up to 10% more or less than the quantity listed in the bid.
- c. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the University shall have sixty (60) days to accept.
- d. A written purchase order mailed or otherwise furnished, to the successful bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written University consent.
- e. If the appropriate space is marked on the bid, other state Institutions of higher education may purchase off the contract during the same period as the University.

4. DISCOUNT PERIOD. Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.

5. DEFAULT OF SELECTED VENDOR. In case of vendor default, the University may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.

6. INSPECTION OF PURCHASES. Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. University shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires University to use nonconforming materials, an appropriate reduction in payment may be made.

7. TAXES. University is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for University are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.

8. NONDISCRIMINATION. The University and bidder agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

9. PROHIBITIONS/NO VENDOR CONTRACT FORM/TENNESSEE LAW/AUDIT. Acceptance of gifts from vendors is prohibited. T.C.A. § 12-3-106. Bidding by state employees is prohibited. T.C.A. § 12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful bidder's bid and the University's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the bidder request exceptions to terms and conditions and/or those proposed by the bidder vary from the bid and University Policies and Guidelines, University may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.

10. PURCHASING POLICIES/BID PROTESTS. This bid request and any award made hereunder are subject to the policies and guidelines of the University of Memphis ([www.http://bf.memphis.edu/bfguide/pur.php](http://bf.memphis.edu/bfguide/pur.php)) (available upon request). Bid protest procedures are available at: <http://www.memphis.edu/procurement/tigerbuy/protest.php>.

11. PROHIBITION ON HIRING ILLEGAL IMMIGRANTS. T.C.A. § 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract

and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

12. SALES AND USE TAX. Before the Purchase Order/Contract resulting from this RFQ is signed, the apparent successful bidder must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

13. PAYMENT. The Seller shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered in completion, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act of 1985. The Seller agrees that University shall issue payment for all goods/services under this Purchase Order via ACH Payment and Seller agrees that no payment shall be made prior to the vendor’s completion of the Substitute W-9/ACH Authorization Form.

14. SERVICE AND SOFTWARE ACCESSIBILITY STANDARDS. Unless otherwise disclosed to University in writing, the Seller warrants and represents that the Products/Services, including any updates, provided to the University will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act.

15. DATA PRIVACY AND SECURITY. Personal Information (PI) includes but is not limited to that information protected by HIPAA, the HITECH Act, FERPA, or Gramm-Leach-Bliley) or such information which would allow a third party to gain access to the personal, medical or financial records of any of any party. Vendor represents and warrants that its collection, access, use, storage, disposal and disclosure of PI complies with all applicable federal and state privacy and data protection laws. Vendor represents and warrants that Vendor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Vendor deems necessary to maintain compliance with SSAE16. If PI provided by Customer to Vendor is subject to FERPA. Vendor agrees that in its handling of FERPA data it will perform as a school official as that term is defined by FERPA regulations. Vendor acknowledges that its improper disclosure or re-disclosure of PI covered by FERPA may, under certain circumstances, result in Vendor's exclusion from eligibility to contract with Customer for at least five (5) years. Vendor shall provide Customer with the name and contact information for an employee of Vendor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with any security incident in which it is reasonably suspected that there has been a breach of information security. Vendor shall immediately mitigate or resolve any Security Incident, at Vendor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Vendor shall reimburse Customer for actual costs incurred by Customer in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under applicable law as a result of the Security Incident.

16. CLICK-WRAP AGREEMENTS. By acceptance of this Purchase Order, the Vendor agrees that click-wrap agreements shall not be binding upon the University. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the University without the approval of the University’s Procurement and Contract Services Office. No employee has the authority to modify, amend, or supplement this Purchase Order through a click-wrap agreement. Purchase Orders can only be modified, amended, or supplemented under these terms through a written Change Order/Amendment approved in accordance with the University’s rules, policies, and procedures.

17. IRAN DIVESTMENT ACT. By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Bidder is not on the list created pursuant to §12-12-106.

18. BOYCOTT OF ISRAEL. Pursuant to TCA Section 12-4-119, Contractor certifies that it is not currently engaged in, and will not for the duration of the agreement, engage in a boycott of Israel, as defined in TCA Section 12-4-119 (a) 1.

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE: _____

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.