

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

The following are the terms and conditions for Texas AgriLife Research, Texas AgriLife Extension Service, and Texas Veterinary Medical Diagnostic Laboratory (TVMDL), hereafter referred to as the Agency.

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**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 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. Bidder guarantees product or service offered will meet or exceed specifications included as part of this Invitation for Bid (IFB). 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 Bids should be submitted on this form. Each bid that is mailed should be placed in a separate envelope completely and properly identified. Instructions on reverse side, top center. Bids must be received by the Agency on or before the hour and date specified for the bid opening.
- 1.4 When sending bids via the U.S. Postal Service, use the address on the front of this IFB. When using a delivery service or hand delivering, which requires a street address, address is 3000 Briarcrest Dr., Suite 202, Bryan, TX 77802.
- 1.5 Late or unsigned bids will not be considered under any circumstances.
- 1.6 Bids should be quoted "F.O.B. destination, freight prepaid and allowed". If quoting freight otherwise, show exact delivery cost and who bears cost if not included in unit price.
- 1.7 Bid prices are requested to be firm for the Agency acceptance within 30 days of bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discount will not be considered in determining an award. All cash discounts will be taken if earned.
- 1.8 Bids should give Vendor ID Number, full name and address of bidder (enter in the block provided if not shown). Failure to sign bid will disqualify it. Person signing bid should show title or authority to bind his or her firm in a contract. Firm name should appear on each page of a bid, in the block provided in the upper right hand corner. The Vendor ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this number in the spaces provided on the front side (upper right) of the IFB if it is not printed. If this number is not known, complete the following: 1. Enter your Federal Employer Identification Number. 2. Sole owner should also enter Social Security Number.
- 1.9 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initialed by bidder or authorized agent of bidder. No bid can be withdrawn after opening time without approval by the Agency based on a written acceptable reason.
- 1.10 Purchases made for the Agency's use are exempt from the State Sales Tax and Federal Excise Tax. Do not include tax in bid. Excise Tax Exemption Certificate will be furnished by the Agency upon request.
- 1.11 The Agency reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the Agency and to reject any and all bid items at the sole discretion of the Agency. The Agency also 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 Agency. Any contract may also be extended up to three months at the sole discretion of the Agency.
- 1.12 Consistent and continued tie bidding could cause rejection of bids by the Agency and/or investigation for antitrust violations.
- 1.13 Check below if preference is claimed under TAC Title 34, Part 1, Chapter 20, Subchapter C, Section §20.38
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
  - Texas Vegetation Native to the Region
  - USA produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy Efficient Products
  - Rubberized asphalt paving material
  - Recycled motor oil and lubricants
  - Products produced at facilities located on formerly contaminated property
  - Products and services from economically depressed or blighted areas
  - Vendors that meet or exceed air quality standards
  - Recycled or Reused Computer Equipment of Other Manufacturers
  - Foods of Higher Nutritional Value
- 1.14 The telephone numbers for FAX submission of bids are 979-458-2730 or 979-458-1217. These are the only numbers that will be used for the receipt of bids. The Agency shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.
- 1.15 Inquiries pertaining to IFBs must include the IFB number and opening date.

## **2. SPECIFICATIONS**

- 2.1 Any catalog, brand name or manufacturer's reference used in the IFB is descriptive only (not restrictive), and is used to indicate type and quality desired. Bids on brands of like nature and quality will be considered unless otherwise specified. If bidding on other than reference, bid should show manufacturer, brand or trade name, and other description of the 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. If bidder takes an exception to specifications or reference data in his or her bid, bidder will be required to furnish brand names, numbers, etc., as specified in the IFB.
- 2.2 All items shall be new and unused, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in IFB. Oral agreements to the contrary will not be recognized.
- 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 Agency. If not destroyed in examination, they will be returned to the bidder, upon request, at bidder's expense. Each sample should be marked with bidder's name and address, and the Agency bid number. Do not enclose in or attach bid to sample.
- 2.5 The Agency will not be bound by any oral statement or representation contrary to the written specifications of this IFB.
- 2.6 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

## **3. TIE BIDS**

In case of tie bids, the award will be made in accordance with Rule §20.36 (b) (3) in Title 34 of the Texas Administrative Code.

## **4. DELIVERY**

- 4.1 Bid should show number of days required to place material in receiving Agency's designated location under normal conditions. Failure to state delivery time obligates supplier to complete delivery in 14 calendar days. Unrealistically short or long delivery promises may cause bid to be disregarded.
- 4.2 If delay is foreseen, supplier shall give written notice to the Agency. Bidder must keep the Agency advised at all times of the status of the order. 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 supplier.
- 4.3 No substitutions or cancellation permitted without written approval of the Agency.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from the Agency.

## **5. INSPECTIONS 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 supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid 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 bidder. Goods which have been delivered and rejected in whole or in part may, at the Agency's option, be returned to the bidder or held for disposition at bidder's risk and expense. Latent defects may result in revocation of acceptance.

## **6. AWARD OF CONTRACT**

A response to an IFB is an offer to contract with the Agency based upon the terms, conditions and specifications contained in the IFB. Bids do not become contracts until they are accepted and an authorized purchase order is issued. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Education Code, Title 3, Chapter 51, Section 51.9335, shall also be considered in making an award when specified. Any legal actions must be filed in Brazos County, TX.

## **7. PAYMENT**

Vendor shall submit one copy of an itemized invoice showing order number and Agency purchase order number. The Agency will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.

## **8. PATENTS OR COPYRIGHTS**

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

## **9. BIDDER ASSIGNMENTS**

Bidder hereby assigns to the Agency any 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).

**10. BIDDER AFFIRMATION**

Signing this IFB with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

- 10.1 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 IFB.
- 10.2 The bidder is not currently delinquent in the payment of any franchise tax owed the State of Texas.
- 10.3 Under §2155.004, Texas Government Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.4 Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.5 The bidder shall defend, indemnify, and hold harmless the Agency, all of its officers, agents, contractors, 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 supplier of vendor in the execution or performance of any contract with vendor resulting from this IFB. Bidder shall coordinate its defense with Texas Attorney General as requested by the Texas A&M University System, Office of the General Counsel. This section is not intended to and shall not be construed to require bidder to indemnify or hold harmless the State or Agency for any claims or liabilities resulting from the negligent acts or omissions of the Agency or its employees.
- 10.6 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.
- 10.7 In accordance with §2155.4441, Government Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 10.8 Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the vendor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the vendor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.
- 10.9 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:** \_\_\_\_\_

- 10.10 Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local government entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>
- 10.11 Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Texas Government Code, relating to the prohibition of using state funds for lobbying activities.
- 10.12 Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Texas Government Code, occurring after September 24, 2005. Under §2155.006, Texas Government Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

**11. NOTE TO BIDDERS**

If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the IFB and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire IFB. If any bidder takes a 'blanket exception' to the entire IFB or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration

**12. TEXAS PUBLIC INFORMATION ACT**

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"). Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.

**13. TEXAS FAMILY CODE SECTION 231.006**

Pursuant to §231.006(d), Texas Family Code, regarding 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 the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

**14. PROTEST PROCEDURES**

Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB may formally protest as provided in the Agency's rules at <http://agsupport.tamu.edu/purchasing/vendorprotests.htm>

**15. NON-APPROPRIATION OF FUNDS**

Any contract resulting from this IFB is subject to termination or cancellation, without penalty to the Agency, either in whole or in part, subject to the availability of federal or state funds. The Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render the Agency's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. Additionally, any federally funded purchases may also be terminated for same reasons. In the event of a termination or cancellation under this Section, the Agency will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and the Agency will not be required to give prior notice.

**16. FORCE MAJEURE**

Neither bidder or Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force Majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such Force Majeure, or otherwise waive this right as a defense.

**17. CONFLICT OF INTEREST**

An Agency employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the Agency must be mindful of these restrictions when interacting with public purchasers of the Agency.

**18. INDEPENDENT CONTRACTOR**

Bidder or bidder's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this IFB. Bidder and bidder's employees, representatives, agents and any subcontractors shall not be employees of the Agency. Should bidder subcontract any of the services required in this IFB, bidder expressly understands and acknowledges that in entering into such subcontract(s), the Agency is in not manner liable to any subcontractor(s) of bidder. 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 IFB.

## **19. DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used as further described herein, by the Agency, and the bidder to attempt to resolve any claim for breach of contract made by vendor:

- (a.) Bidder's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, bidder shall submit written notice, as required by Subchapter B, to:

**Dr. Bill Dugas, Texas AgriLife Research**

**Mr. Kyle Smith, Texas AgriLife Extension Service**

**Mr. Ralph Cobb, Texas Veterinary Medical Diagnostic Laboratory (TVMDL)**

Said notice shall also be given to all other representatives of the Agency and bidder otherwise entitled to notice under the parties' contract. Compliance by bidder with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

- (b.) The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the bidder's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Agency if the parties are unable to resolve their disputes under subparagraph (a.) of this paragraph.
- (c.) Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the Agency nor any conduct of any representative of the Agency thereafter shall be considered a waiver of sovereign immunity to suit.
  - (1) The submission, processing, and resolution of bidder's claim is governed by the published rules as adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260 as currently effective, hereafter enacted or subsequently amended.
  - (2) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of the performance by the bidder, in whole or in part.
  - (3) The designated individual responsible on behalf of the Agency for examining any claim or counterclaim and conducting any negotiations related thereto, as required under Section 2260.052 of the Texas Government Code shall be Dr. Bill Dugas (Research), Mr. Kyle Smith (Extension), Mr. Ralph Cobb (TVMDL).