

STANDARD TERMS AND CONDITIONS

IMPORTANT NOTICE REGARDING ALABAMA SALES TAX

Alabama law (section 41-4-116, code of Alabama 1975) provides that every bid submitted and contract executed shall contain a certification that the vendor, contractor, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. **BY SUBMITTING THIS BID, THE BIDDER IS HEREBY CERTIFYING THAT THEY ARE IN FULL COMPLIANCE WITH ACT NO. 2006-557,** they are not barred from bidding or entering into a contract pursuant to 41-4-116, and acknowledges that the awarding authority may declare the contract void if the certification is false.

1. PREPARATION OF BIDS

- 1.1 Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- 1.2 All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent, and must be initialed in ink by person signing bid.
- 1.3 Brand Name References: Unless specified "No Substitute," any catalog brand name or manufacturer's reference used in the bid invitation is for descriptive/comparison purposes only, not restrictive, and used to indicate the type and quality desired. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The University reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the University may require the bidder to supply additional descriptive material, samples, or demonstrators. The bidder guarantees that the product offered will meet or exceed the referenced product and/or specifications identified in this bid invitation. If the bidder takes no exception to the specifications, bidder will be required to furnish the product exactly as specified in the invitation.
- 1.4 Samples: Samples or demonstrators, when requested, must be furnished free of expense to the University. Samples not destroyed during reasonable examination will become property of the University unless bidder states otherwise. All demonstrators will be returned after reasonable examination. Each sample should be marked with the bidder's name and address, bid number and item number.
- 1.5 Time of Performance: The number of calendar days in which delivery will be made after receipt of order shall be stated in the bid where applicable.

2. SUBMISSION OF BIDS

- 2.1 Bids, modifications or corrections thereof received after the closing time specified will not be considered.

3. ACCEPTANCE OF BIDS

- 3.1 The University reserves the right to accept or reject all or any part of a bid or any and all bids, to waive any informality, and to award the bid to best serve the interest of the University.
- 3.2 If a bidder fails to state the time within which a bid must be accepted, it is understood and agreed that the University shall have 30 days to accept.

4. ERROR IN BID

- 4.1 In case of error in the extension of prices in the bid, the unit price will govern. No bid shall be altered or amended after the specified time for opening bids.

5. AWARD

- 5.1 Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications.
- 5.2 When more than one item is specified in the Invitation, the University reserves the right to determine the low bidder either on the basis of the individual items or on the basis of all items included in its Request for Sealed Bids, or as expressly stated in the Request for Sealed Bids.
- 5.3 A written purchase order or contract award mailed, or otherwise furnished, to the successful bidder within the time of acceptance specified in the Request for Sealed Bids results in a binding contract without further action by either party. The contract shall not be assignable by the vendor in whole or part without the written consent of the University.

6. DELIVERY

- 6.1 The Request for Sealed Bids will show the number of days to place a commodity in the University designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in award. The University has the right to extend delivery if reasons appear valid.
- 6.2 Delivery shall be made during University work hours only, 8:00 a.m. to 4:30 p.m., unless prior approval for other shipment has been obtained.
- 6.3 Packing memoranda shall be enclosed with each shipment.

7. ACCEPTANCE AND REJECTION

- 7.1 Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the vendor promptly after notification of rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the University thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment may be made with a proper reduction in price.

8. TAXES AND TRADE DISCOUNTS

- 8.1 The University of South Alabama is a state educational institution exempt by law from payment of such taxes. Do not include state or local sales taxes in bid price.
- 8.2 Trade discounts should be deducted from the unit price and net price should be shown in the bid.

9. DEFAULT

- 9.1 Back orders, default in promised delivery, or failure to meet specifications authorize the University to cancel this contract to the defaulting contractor. The contractor must give written notice to the University of the reason and the expected delivery date.
- 9.2 Consistent failure to meet delivery without acceptable justification may cause removal from the bidders list or suspension of eligibility for award.

10. WAIVER

- 10.1 The University reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the University, so long as such waiver is not given so as to deliberately favor any single vendor and would

have the same effect on all vendors.

11. CANCELLATION

- 11.1 Any contract or item award may be canceled for cause by either party by giving 30 days written notice of intent to cancel. Cause for the University to cancel shall include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the contractor within period of 30 days following the date of expiration or cancellation. Cancellation by the University does not relieve the Contractor of any liability arising out of a default or nonperformance. Cause for the vendor to cancel shall include, but is not limited to the item(s) being discontinued and unavailable from the manufacturer.

12. ALTERNATE BIDS

- 12.1 Unless specifically requested by the University, alternate bids will not be considered. An alternate is considered to be a bid that does not comply with the minimum provisions of the specifications.

13. BID OPENINGS

- 13.1 Bid opening will be conducted open to the public. However, they will serve only to open, read and tabulate the bid price on each bid. No discussion will be entered into with any vendor as to the quality or provisions of the specifications and no award will be made, either stated or implied, at the bid opening.

14. INVOICING

- 14.1 The contractor shall be paid upon completion of all of the following: (1) submission of an original itemized invoice indicating both the bid number and the purchase order number (where applicable), (2) delivery and acceptance of all commodities, and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the University of South Alabama department of Accounts Payable.

15. PRICING

- 15.1 Bidders must quote FOB University of South Alabama, Mobile, Alabama, and must bid the unit price. In case of such errors in extension, unit price shall govern. Prices are firm and, thus, are not subject to escalation unless otherwise stated in the Request for Sealed Bids. Unless otherwise specified, the bid must be firm for acceptance for thirty (30) days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the Request for Sealed Bids.

16. GUARANTY

- 16.1 All items bid shall be newly manufactured, in first class condition, of latest model and design, to include where applicable containers suitable for shipment and storage unless otherwise specified in the Request for Sealed Bids. The bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material and that, if sold by drawing, specifications, or sample, it will conform thereto and will serve the function for which it was furnished. The bidder further guarantees that, if the items furnished hereunder are to be installed by the bidder, such items will function properly when installed. The bidder also guarantees that all applicable laws relating to construction, packaging, labeling, and registration have been complied with. The bidder's obligations under this paragraph shall survive for a period of one (1) year from the date of delivery, unless otherwise specified herein.
- 16.2 Per Section 39 of the Alabama State Bid Law, bidders for public works (construction) projects valued in excess of \$50,000 shall file either a cashier's check drawn on an Alabama bank or a bid bond executed by a surety company duly authorized and qualified to make such bonds in the State of Alabama, payable to the awarding authority for an amount not less than five percent of the awarding authority's estimated cost or of the

contractor's bid, but in no event more than ten thousand dollars (\$10,000) unless otherwise stated on this Request for Sealed Bids unless otherwise noted in this Request for Sealed Bids.

In addition, the successful bidder for public works projects valued in excess of \$50,000, shall provide a performance bond, with penalty equal to 100 percent of the amount of the contract price, and a payment bond, payable to the awarding authority letting the contract, shall be executed in an amount not less than 50 percent of the contract price, with the obligation that the contractor or contractors shall promptly make payments to all persons supplying labor, materials, or supplies for or in the prosecution of the work provided in the contract and for the payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the bond unless otherwise noted in this Request for Sealed Bids.

17. STORAGE

17.1 The University will be responsible for storage if the contractor delivers within the time required and the University cannot accept delivery.

18. VARIATION IN QUANTITY

18.1 The University of South Alabama assumes no liability for commodities produced, processed, or shipped in excess of those quantities specified on the University purchase order.

19. STATE PROPERTY

19.1 Any specifications, drawings, technical information, dies, cuts, negatives, positive, data, or any commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the University and the State and shall be kept confidential, used only as expressly authorized and returned to the University at the contractor's expense. Commodities must be properly identified by description when returned.

20. PATENTS OR COPYRIGHTS

20.1 The contractor agrees to indemnify and hold the University harmless from all claims, damages, and costs, including attorney's fees, arising from infringement of patents or copyrights.

21. ASSIGNMENTS

21.1 Any contract entered into pursuant to the Request for Sealed Bids is not assignable nor the duties there under delegable by either party without the written consent of the other party of the contract.

22. OTHER REMEDIES

22.1 In addition to the remedies outlined herein, the contractor and the University of South Alabama have the right to pursue any other remedy permitted by law or in equity.

23. ANTI-TRUST ASSIGNMENT

23.1 As part of the consideration for entering into any contract pursuant to the Request for Sealed Bids, the bidder named on the front of the Request for Sealed Bids acting herein by the authorized agent, hereby assigns, sells and transfers to the University of South Alabama all rights, title and interest in and to all causes of action it may have under the

antitrust laws of the United States or the state of Alabama for price fixing, which causes of action have accrued.

24. CLARIFICATIONS

24.1 Any interpretation or correction of the bid documents or specifications will be made only by addendum and will be mailed or delivered to each bidder of record. The University of South Alabama will not be responsible for any oral explanations or interpretations of this bid. All questions concerning this Request for Sealed Bids must be addressed to the University of South Alabama Purchasing Department, 307 University Blvd., Room AD-245, Mobile, AL 36688-0002 (Telephone 251-460-6151).

25. PROPRIETARY INFORMATION

25.1 All bid information, proposals, applications, briefs, sales brochures, etc. will become the property of the University of South Alabama when submitted in response to this Request for Sealed Bids. All bid documents submitted by the bidder shall be available for public inspection after bid opening.

26. PRODUCT INFORMATION

26.1 Bidders are requested to submit technical and descriptive literature, with bid. Information submitted shall be sufficiently detailed to substantiate that product offered meets or exceeds specifications. Failure to comply with this request may result in bid rejection.

27. TERMS AND CONDITIONS

27.1 To be considered, bidders must include as part of their bid all of the provisions of this Request for Sealed Bids. An official authorized to bind the bidder must sign bids. If the bidder submits standard terms and conditions with his bid, and if any section of those terms are in conflict with the laws of the State of Alabama, the laws of the State of Alabama will govern.