

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

1. BIDDING REQUIREMENTS

- 1.1 Responding bidder (VENDOR) must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of EAST TEXAS A&M UNIVERSITY (hereinafter "ETAMU").
- 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. VENDOR guarantees product or service offered will meet or exceed specifications included as part of this Invitation for Bid (IFB).
- 1.3 Bids should be submitted electronically via the AggieBuy e-procurement platform, or as otherwise instructed. If allowed, mailed bids should be placed in a separate envelope, completely and properly identified. Bids must be received by the ETAMU DEPARTMENT OF PROCUREMENT SERVICES on or before the hour and date specified for the bid opening.
- 1.4 Bids sent via U.S. Postal Service, must use the address indicated in the Invitation for Bid. For delivery service or hand deliveries requiring a street address, use 2600 S. Neal Street, Commerce TX 75428.
- 1.5 Late bids will not be considered under any circumstances.
- 1.6 Bids should be quoted "F.O.B. destination, freight prepaid and allowed" or "Delivered Duty Paid." 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 a minimum of 30 days after bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discount will not be considered in determining the low bid. All cash discounts will be taken if earned.
- 1.8 As a VENDOR responding to this invitation for bid, upon submission of your response, regardless of the format of your submission, you and the entity you represent are agreeing to the Terms and Conditions of Bid ("Terms and Conditions") presented herein.
- 1.9 Bid may not be altered or amended after opening time. Any alterations made before opening time must be initialed by VENDOR or authorized agent of VENDOR. No bid may be withdrawn after opening time without approval by the ETAMU DEPARTMENT OF PROCUREMENT SERVICES.
- 1.10 Purchases made for use by ETAMU are exempt from State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificate will be furnished by ETAMU upon request.
- 1.11 ETAMU 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 State.
- 1.12 Preferences may be given to bids pursuant to Texas Government Code § 2155.441-452 (check any that are applicable):
 - ☐ Products of persons with mental or physical disabilities
 - ☐ Energy efficient products
 - ☐ Rubberized asphalt paving material
 - ☐ Texas and United States products and Texas services (Preference given to Texas vendor and Service-Disable Veteran)
 - ☐ Recycled, remanufactured, or environmentally sensitive products
 - ☐ Paper containing recycled fibers
 - ☐ Recycled motor oil and lubricants
 - ☐ Products and services from economically depressed or blighted areas

- ☐ Products produced at facilities located on formerly contaminated property
- ☐ Vendors that meet or exceed air quality standards
- ☐ Contractors providing goods of higher nutritional value

- 1.13 Inquiries pertaining to IFBs must include the IFB number and opening date.
- 1.14 **SPECIFICATIONS.** Any catalogue, 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 VENDOR takes an exception to specifications or reference data in his or her bid, VENDOR will be required to furnish brand names, numbers, etc., as specified in the IFB.
- 1.15 All items shall be new and unused, including containers suitable for shipment and storage, unless otherwise indicated in IFB. Oral agreements to the contrary will not be recognized.
- 1.16 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 1.17 Samples, when requested, must be furnished free of expense to ETAMU. If not destroyed in examination, they will be returned to the VENDOR, upon request, at VENDOR's expense. Each sample should be marked with VENDOR's name and address, and ETAMU bid number. Do not enclose in or attach bid to sample.
- 1.18 ETAMU will not be bound by any oral statement or representation contrary to the written specifications of the IFB.
- 1.19 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

2. TIE BIDS. If two or more responses receive the same score after evaluation, the award will be based on the following preferences. Priority of the claimed preference shall be given in the sequence listed below (with 1 indicating the highest priority and 5 the lowest):

1. Texas Agricultural Product
2. Texas Product
3. Texas vendor and Service-Disable Veteran
4. Texas vendor
5. U.S. Product

If pricing and preferences are equal, award will be determined by tossing a coin with two witnesses to oversee the tie-breaking activity.

Consistent and continued tie bidding could cause rejection of bids by ETAMU and/or investigation for antitrust violations.

3. DELIVERY

- 3.1 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 VENDOR to complete delivery in 14 calendar days. Unrealistically short or long delivery promises may cause bid to be disregarded.
- 3.2 If delay is foreseen, VENDOR shall give written notice to ETAMU. ETAMU has the right to extend delivery date for valid reasons. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes

ETAMU to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting VENDOR.

- 3.3 No substitutions or cancellation permitted without written approval of the ETAMU DEPARTMENT OF PROCUREMENT SERVICES.
- 3.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from ETAMU.
4. **INSPECTION AND TESTS.** All goods will be subject to inspection and test by ETAMU to the extent practicable at all times and places. Authorized ETAMU personnel shall have access to VENDOR'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 VENDOR. Goods which have been delivered and rejected in whole or in part may, at ETAMU's option, be returned to the VENDOR or held for disposition at VENDOR's risk and expense. Latent defects may result in revocation of acceptance.
5. **VENDOR AFFIRMATION.** Signing this bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the VENDOR shall be removed from all bid lists. By signature hereon affixed, the VENDOR hereby certifies that:
- 5.1 The VENDOR 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.
- 5.2 Neither the VENDOR nor the firm, corporation, partnership or institution represented by the VENDOR, or anyone acting for such firm, corporation or institution 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.
- 5.3 The VENDOR shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents 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 this purchase order.
- 5.4 VENDOR certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of payment State agency. If section 669.003 applies, VENDOR 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 VENDOR: _____
- Date of Employment with VENDOR: _____
6. **CONFLICTING TERMS & CONDITIONS.** Any terms and conditions attached to a bid will not be considered unless the VENDOR specifically refers to them on the front of this bid form.
- WARNING: SUCH TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF THE BID. (E.G. BIDS WITH THE LAWS OF A STATE OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC.)**
7. **AWARD OF CONTRACT.** A response to an IFB is an offer to contract with ETAMU 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.
8. **PAYMENT.** All invoices shall be itemized, showing order number and agency purchase order number. ETAMU 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.

9. **PATENTS OR COPYRIGHTS.** The VENDOR agrees to protect ETAMU from claims involving infringement of patents or copyrights.
10. **VENDOR ASSIGNMENTS.** VENDOR hereby assigns to purchaser 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).
11. **EXPORT CONTROL.** VENDOR agrees to comply with all applicable US Export Control laws and regulations to include the Export Administration Regulations (EAR), the International Traffic in Arms (ITAR) and any other applicable US export laws and regulations. As an institution of higher learning, ETAMU typically does not take receipt of export controlled goods, technical data, services or technology ("Materials") except as may be specifically agreed by ETAMU. VENDOR agrees that it will not provide or make accessible to ETAMU any export controlled Materials without first informing ETAMU of the export-controlled nature to the Materials and obtaining from ETAMU its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to ETAMU. VENDOR agrees to obtain government approval or export license if required from the appropriate US Government agency and to share that information with ETAMU prior to delivery of such Materials. In the event that any purchased item is export controlled under the U.S. Export Control Regulations, VENDOR shall provide ETAMU with the export control classification and failure to do so may result in the cancellation of the respective purchase order or agreement.
12. **SUSTAINABILITY.** ETAMU is committed to campus sustainability initiatives. Support of these initiatives necessarily includes the purchase of goods and services that minimize the impact on the environment to the greatest extent possible. ETAMU requests VENDOR's assistance in campus sustainability initiatives by informing in any bid response, or other discussions, of VENDOR's sustainability practices or environmentally sustainable product offerings. For example, alternative products available from VENDOR which may be recyclable or reusable, end of life (obsolescence) return of equipment to VENDOR, energy-saving devices, return to VENDOR of shipping containers, packaging or like excess materials.
13. **STATE CONTRACTING.** VENDOR agrees to the following state contracting requirements All references to "Agreement" shall also mean the Terms and Conditions herein and any Purchase Order issued which includes reference to the Terms and Conditions. ETAMU and VENDOR may be individually referred to as "Party" or collectively referred to as "Parties."
- 13.1 **Compliance with Laws.** Each Party hereto shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- 13.2 **Prompt Pay.** ETAMU's payment shall be made in accordance with Chapter 2251, *Texas Government Code* ("the Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
- 13.3 **State Auditor's Office.** VENDOR understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. VENDOR agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. VENDOR will include this provision in all contracts with permitted subcontractors.
- 13.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*,

VENDOR agrees that any payments owing to VENDOR under this Agreement may be applied directly toward certain debts or delinquencies that VENDOR owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

- 13.5 **Loss of Funding.** Performance by ETAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, ETAMU will issue written notice to VENDOR and ETAMU may terminate this Agreement without further duty or obligation hereunder. VENDOR acknowledges that appropriation of funds is beyond the control of ETAMU. In the event of a termination or cancellation under this Section, ETAMU will not be liable to VENDOR for any damages that are caused or associated with such termination or cancellation.
- 13.6 **Public Information.** VENDOR acknowledges that ETAMU is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon ETAMU's written request, and at no cost to ETAMU, VENDOR will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of ETAMU in a non-proprietary format acceptable to ETAMU that is accessible by the public. VENDOR acknowledges that ETAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement and VENDOR agrees that this Agreement can be terminated if VENDOR knowingly or intentionally fails to comply with a requirement of that subchapter.
- 13.7 **Dispute Resolution.** To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by ETAMU and VENDOR to attempt to resolve any claim for breach of contract made by VENDOR that cannot be resolved in the ordinary course of business. VENDOR shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of ETAMU, who shall examine VENDOR's claim and any counterclaim and negotiate with VENDOR in an effort to resolve the claim. This provision and nothing in this Agreement waives ETAMU's sovereign immunity to suit or liability, and ETAMU has not waived its right to seek redress in the courts.
- 13.8 **Access to Agency Data.** If applicable, Pursuant to Section 2054.138, *Texas Government Code*, VENDOR shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://inside.tamuc.edu/CampusLife/CampusServices/CITESupportCenter/29.01.03.r0.02-electronic-information-security.aspx> as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of ETAMU's data. VENDOR shall periodically provide ETAMU with evidence of its compliance with the Security Controls within thirty (30) days of ETAMU's request.
- 13.9 **Data Privacy.** VENDOR shall hold ETAMU's data in confidence. VENDOR shall only use or disclose ETAMU's data for the purpose of fulfilling VENDOR's obligations under this Agreement, as required by law, or as otherwise authorized in writing by ETAMU. VENDOR shall restrict disclosure of ETAMU's data solely to those employees, subcontractors or agents of VENDOR that have a need to access the ETAMU's data in order for VENDOR to perform its obligations under this Agreement. VENDOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on VENDOR in this Agreement.

VENDOR shall, within two (2) business days of discovery, report to ETAMU any use or disclosure of ETAMU's data not authorized by this Agreement or in writing by ETAMU. ETAMU's designated contact for breaches shall be Help Desk Central (helpdesk@etamu.edu; (903) 468-6000). Help Desk Central can be contacted 24/7. Security breach investigation reports shall be provided to the designated contact for ETAMU and ETAMU's Chief Information Security Officer (helpdesk@etamu.edu).

VENDOR's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the ETAMU data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what VENDOR has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action VENDOR has taken or will take to prevent future similar unauthorized use or disclosure. VENDOR shall provide such other information, including a written report, as reasonably requested by ETAMU. VENDOR must promptly notify ETAMU of any legal request for ETAMU's data from a third party and take (and assist ETAMU in taking) appropriate steps not to disclose such ETAMU data.

Within thirty (30) days of the expiration or termination of this Agreement, VENDOR, as directed by ETAMU, shall return all ETAMU data to ETAMU in its possession (or in the possession of any of its subcontractors or agents) or delete all such ETAMU data if return is not feasible. VENDOR shall provide ETAMU with at least ten (10) days' written notice of VENDOR's intent to delete such ETAMU data, and shall confirm such deletion in writing.

- 13.10 **FERPA.** If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), ETAMU hereby designates VENDOR as a school official with a legitimate educational interest in any education records (as defined in FERPA) that VENDOR is required to create, access, receive, or maintain in order to fulfill its obligations under this Agreement. VENDOR shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or ETAMU in writing. VENDOR is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. VENDOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on VENDOR in this Section, including without limitation, the prohibition on redisclosure.
- 13.11 **Payment Card Industry (PCI) Compliance.** If applicable, for purposes of this Agreement, "PCI DSS" means the most current version of the Payment Card Industry Data Security Standard administered by the Payment Card Industry Security Standards Council. VENDOR acknowledges and agrees that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of ETAMU, or to the extent that VENDOR could impact the security of the cardholder data environment.

VENDOR represents and warrants that, as of the Effective Date of this Agreement, it has complied with all PCI DSS requirements and has performed the necessary steps to validate its compliance with PCI DSS. VENDOR shall maintain such compliance for the Term of this Agreement and send documentation of its most recent validation of compliance to ETAMU annually during the Term of this Agreement. In the event that VENDOR learns that it is no longer PCI DSS compliant, VENDOR will notify ETAMU within two (2) business days of discovery and immediately remediate such non-compliance.

VENDOR acknowledges that unauthorized access to the cardholder data environment (a "cardholder data breach") resulting from a lapse in VENDOR's security obligations is grounds for early termination of this Agreement, without

penalty and with immediate effect, at ETAMU's discretion. VENDOR agrees to comply with all laws, rules, and regulations applicable to cardholder data services, including without limitation, those laws requiring notification of individuals in the event of a cardholder data breach.

VENDOR agrees to indemnify and hold harmless ETAMU from and against any third-party claims, damages, or other harm related to a cardholder data breach. This provision survives termination of this Agreement.

- 13.12 **Cybersecurity Training Program.** If applicable, Pursuant to Section 2054.5192, *Texas Government Code*, VENDOR's employees, officers, and subcontractors who have access to ETAMU's computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code*, and selected by ETAMU. The cybersecurity training program must be completed by VENDOR's employees, officers, and subcontractors during the Term and any renewal period of this Agreement. VENDOR shall verify completion of the program in writing to ETAMU within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. VENDOR acknowledges and agrees that its failure to comply with the requirements of this paragraph are grounds for ETAMU to terminate this Agreement for cause.

- 13.13 **Access by Individuals with Disabilities.** VENDOR represents and warrants that the goods and services provided hereunder comply with the accessibility requirements in Title 1, Chapters 206 and 213 of the Texas Administrative Code and Title II of the Americans with Disabilities Act and the technical standards set forth in the Web Content Accessibility Guidelines 2.1, level AA (available at <https://www.w3.org/TR/WCAG21>), as published by the Web Accessibility Initiative of the World Wide Web Consortium (the "Accessibility Warranty"). VENDOR shall promptly respond to and use commercially reasonable efforts to resolve and remediate any noncompliance with the Accessibility Warranty. In the event that VENDOR fails or is unable to do so, ETAMU may immediately terminate this Agreement, and VENDOR will refund to ETAMU all amounts paid by ETAMU under this Agreement within thirty (30) days following the effective date of termination.

- 13.14 **Cloud Computing Services.** If applicable, VENDOR certifies that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP"). Pursuant to Section 2054.0593, *Texas Government Code*, VENDOR shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. VENDOR shall provide ETAMU with evidence of its TX- RAMP compliance and certification within thirty (30) days of ETAMU's request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that VENDOR fails to maintain TX-RAMP compliance and certification throughout the Term, including any Renewal Term, ETAMU may immediately terminate this Agreement, and VENDOR will provide a refund to ETAMU of any prepaid fees.

- 13.15 **Vendor Access.** If applicable, VENDOR hereby acknowledges responsibility to comply with all applicable ETAMU policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by ETAMU.

For purposes of this section concerning Vendor Access, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in Section 51.914 of the *Texas Education Code*); and medical records. Mission Critical Information is

information that is defined by ETAMU to be essential to the continued performance of the mission of ETAMU, the unavailability of which would result in consequences to ETAMU.

In the event VENDOR should obtain or be granted access to Confidential and/or Mission Critical Information of ETAMU ("ETAMU Information"), VENDOR will keep and protect ETAMU Information confidential to no less than the same degree of care as required by ETAMU policies, rules and procedures. At the expiration or early termination of this Agreement, VENDOR agrees to return all ETAMU Information or agrees to provide adequate certification that the ETAMU Information has been destroyed. VENDOR, its employees, agents, contractors, and subcontractors shall use the ETAMU Information solely in connection with performance by VENDOR of the services provided to ETAMU pursuant to this Agreement, and for no other purpose. Should VENDOR, its employees, agents, contractors, or subcontractors acquire other ETAMU Information during the course of this Agreement, it shall not be used for VENDOR's own purposes or divulged to third parties. VENDOR shall comply with all terms and conditions of any ETAMU non-disclosure agreement applicable to this Agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this Agreement and the eligibility for VENDOR to receive any ETAMU Information from ETAMU for a period of not less than five (5) years.

Both Parties shall each provide contact information for specific individuals. Should the designated contact for either Party need to be changed, the new contact information shall be updated and provided to the respective Parties within 24 hours of any staff changes. Should VENDOR have a need to access ETAMU's designated contact. Further, VENDOR is responsible for reporting all security breaches directly to ETAMU. ETAMU's designated contact for breaches shall be Help Desk Central (helpdesk@etamu.edu); (903) 468-6000). Help Desk Central can be contacted 24/7. Security breach investigation reports shall be provided to the designated contact for ETAMU and ETAMU's Chief Information Security Officer (helpdesk@etamu.edu).

- 13.16 **Buy Texas.** VENDOR agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, VENDOR will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

- 13.17 **HUB Subcontracting Plan.** It is the policy of the State of Texas and ETAMU to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in ETAMU contracting and purchasing. When applicable, VENDOR will use good faith efforts to subcontract work performed under this Agreement in accordance with a ETAMU HUB subcontracting plan ("HSP"). Except as specifically provided in the HSP, VENDOR will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, VENDOR will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

- 13.18 **Insurance.** VENDOR shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth in the solicitation document and/or at the following link:
<https://inside.tamuc.edu/facultystaffservices/purchasing/references/forms/default.aspx>

- 13.19 **Prohibited Agreements.** VENDOR recognizes that as a state agency, ETAMU may not award contracts as outlined below.

- a. **Compensation for Preparing Bids.** ETAMU cannot award a contract if such contract includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid

or contract is based. Under Section 2155.004, *Texas Government Code*, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

- b. **Disaster Related Contracts.** ETAMU cannot award a contract if such contract involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005. Under Section 2155.006, *Texas Government Code*, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- c. **Involvement in Human Trafficking.** ETAMU cannot award a contract if such contract includes financial participation by a person, who, during the five-year period preceding the date of the contract, has been convicted of any offense related to the direct support or promotion of human trafficking. Under Section 2155.0061, *Texas Government Code*, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

- 13.20 **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, VENDOR certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 13.21 **Certification Regarding Boycotting Israel.** To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, VENDOR certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. VENDOR acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 13.22 **Certification Regarding Business with Certain Countries and Organizations.** To the extent that Subchapter F, Chapter 2252, *Texas Government Code*, is applicable to this Agreement, VENDOR certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. VENDOR acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 13.23 **Certification as to Discrimination Against Firearm Entities.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, VENDOR verifies that (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. VENDOR acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 13.24 **Certification as to Boycotting Energy Companies.** To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, VENDOR verifies that (a) it does not boycott

energy companies, and (b) it will not boycott energy companies during the term of this Agreement. VENDOR acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

- 13.25 **Franchise Tax Certification.** If VENDOR is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then VENDOR certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that VENDOR is exempt from the payment of franchise (margin) taxes.
- 13.26 **Prior Employment.** VENDOR acknowledges that Section 2252.901, *Texas Government Code*, prohibits ETAMU from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by ETAMU during the twelve (12) month period immediately prior to the effective date of the Agreement. If VENDOR is an individual, by signing this Agreement, VENDOR represents and warrants that it is not a former or retired employee of ETAMU that was employed by ETAMU during the twelve (12) month period immediately prior to the effective date of the Agreement.
- 13.27 **Conflict of Interest.** VENDOR certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, or any officer of ETAMU or the A&M System, has a direct or indirect financial interest in VENDOR or in the transaction that is the subject of this Agreement.
- 13.28 **Not Eligible for Rehire.** VENDOR is responsible for ensuring that its employees involved in any work being performed for ETAMU under this Agreement have not been designated as "Not Eligible for Rehire" as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event ETAMU becomes aware that VENDOR has a NEFR Employee involved in any work being performed under this Agreement, ETAMU will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by ETAMU.
- 13.29 **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.
- 13.30 **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by VENDOR's service to ETAMU. As an independent contractor, VENDOR is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Except as specifically required under the terms of this Agreement, VENDOR (and its representatives, agents, employees, and subcontractors) will not represent themselves to be an agent or representative of ETAMU or the A&M System.
- 13.31 **Non-Assignment.** VENDOR shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of ETAMU.
- 13.32 **Representations & Warranties.** If VENDOR is a business entity, VENDOR warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on

behalf of VENDOR has been duly authorized to act for and bind VENDOR.

13.33 **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

13.34 **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

13.35 **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against ETAMU is to be in the county in which the principal office of ETAMU's governing officer is located.

13.36 **Limitations.** As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of ETAMU to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on ETAMU's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on ETAMU except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by ETAMU nor any other conduct, action, or inaction of any representative of ETAMU relating to this Agreement constitutes or is intended to constitute a waiver of ETAMU's or the state's sovereign immunity.

13.37 **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.

13.38 **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

13.39 **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a

subsequent written agreement signed by authorized representatives of both Parties.

13.40 **Certification as to Hardening of State Government.** VENDOR certifies that pursuant to Executive Order GA-48, Hardening of State Government, VENDOR is not and, if applicable, none of its holding companies or subsidiaries are a) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; b) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; c) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or d) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. VENDOR acknowledges that a false certification is grounds for immediate termination of any resulting contract or purchase order with no further obligation on the part of ETAMU.