

TERMS & CONDITIONS

1. **GENERAL:** All terms and conditions stated in any Invitation for Bid (IFB)/Purchase Order govern this contract.
2. **PRICES:** Prices are firm and not subject to escalation, unless otherwise specified in the Invitation for Bid/Quote. In case of errors in extension, unit prices shall prevail. Vendor must receive approval from the Purchasing Department prior to delivery when actual prices differ from the stated prices.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** Arkansas State University-Beebe, hereafter referred to as the University, must pay State Sales Tax. Itemize State Sales Tax or Use Tax, when applicable, on your invoices.
5. **BRAND NAME PREFERENCES:** Contractor guarantees commodity delivered is the same as specified in his bid/quote. No substitutions or cancellations are permitted without prior approval of the Procurement Official.
6. **GUARANTY:** All items delivered are to be newly-manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the IFB. Contractor guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material; that if sold by drawing, sample, or specification, it will conform thereto and will serve the function for which furnished. Contractor further guarantees that if the items furnished hereunder are to be installed by the contractor, that such items will function properly when installed. Contractor also guarantees that all applicable laws have been compiled with relating to construction, packaging, labeling, and registration. Contractor's obligations under this paragraph shall survive for a period of one (1) year from date of delivery unless otherwise specified.
7. **DELIVERY:** Unless otherwise stated, all shipments will be FOB inside delivery to the location stated on the face of the PO. Delivery shall be made during work hours only, 8:00 a.m. to 4:30 p.m., Monday-Friday excluding legal holidays, unless prior approval has been obtained from the University. Packing memorandum shall be enclosed with shipment. On the face of the contract award is shown the number of days required to place commodity in the University's designated location under normal conditions. Backorders or failure to deliver within the time required may be default of the contract. Contractor must give notice to the Procurement Official of the reason and the expected delivery date. The University has the right to extend deliver if reasons appear valid. If date or reason is not acceptable, contractor is in default and the University may buy elsewhere and any additional cost will be borne by the contractor.
8. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the University after delivery. Default in promised delivery or failure to meet specifications authorizes the University to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to defaulting contractor.
9. **VARIATION IN QUANTITY:** The University assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.
10. **INVOICING:** Contractor shall submit an original itemized invoice showing bid number (if applicable) and purchase order number. Invoices must be sent to "Invoice To" point shown on purchase order.
11. **UNIVERSITY PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for the use hereunder shall remain property of the University, be kept confidential, be used only as expressly authorized, and returned at the contractor's expense to the FOB point, properly identifying what is being returned.
12. **ASSIGNMENT:** This contract is not assignable nor the duties hereunder delegable by either party without written consent of the other party to the contract.
13. **OTHER REMEDIES:** In addition to the remedies outlined herein, the contractor and the University have the right to pursue any other remedy permitted by law or in equity.
14. **LACK OF FUNDS:** The University may cancel this contract to the extent funds are no longer legally available for expenditure under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor. If the University is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, or, if the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim with the Arkansas Claims Commission.
15. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all remedies available to the agency.
16. **ARKANSAS TECHNOLOGY ACCESS CLAUSE:** When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

17. **ETHICS:** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a University contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business. Any violation of this ethics statement can result in the cancellation of any contract with the University.
18. **SOVEREIGN IMMUNITY:** Nothing in this agreement shall be construed to waive the sovereign immunity of the State of Arkansas of any entity thereof, including Arkansas State University-Beebe.
19. **PERFORMANCE STANDARDS:** Act 557 of 2015 enacted by the Arkansas General Assembly requires that contracts include performance standards. By acceptance of this Purchase Order, the Contractor agrees to the performance of any technical/general services in a professional, comprehensive manner. This may include, but not be limited to, ensuring milestone deadlines are met, and services are delivered in a professional, comprehensive manner, consistent with the contracted skill level. Any special performance standards outlined in any associated contract or agreement to this Purchase Order may be in addition to the above performance standards.