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## **Procurement Terms and Conditions**

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### **BUSINESS INTEGRITY HOTLINE**

Wright State University recognizes the importance of business integrity and has established a confidential hotline. When you call 937-775-3997 (24 hours a day) you do not have to give your name, but please give detailed information regarding your concern. For further information, please visit: [www.wright.edu/admin/audit/hotline.html](http://www.wright.edu/admin/audit/hotline.html) .

Revised 11/15

## **1. DEFINITIONS OF TERMS**

Wherever the following terms appear, they shall have the meanings set forth opposite each.

- 1.1 Owner, University, WSU: The owner or University or WSU shall be the Board of Trustees of WRIGHT STATE UNIVERSITY, Dayton, Ohio.
- 1.2 Contractor: The party or parties (in case of a multiple award) awarded the contract, its heirs, executors, administrators, successors or assignees.
- 1.3 Sub-contractor: Any person, persons, firm, company, partnership, corporation or other business association with the contractor to perform a part or all of the contract.
- 1.4 Proposer: Any invited firm or individual who submits a proposal to fulfill the conditions and terms of this invitation to negotiate.
- 1.5 Firm: Any qualified potential proposer.

## **2. OBSERVANCE OF LAWS AND REGULATIONS**

- 2.1 In performing the services required under a contract, Contractors will be required to comply with all applicable federal, state and local laws, statutes, ordinances and regulations, including but not limited to obtaining at its own expense requisite permits, license and certifications; observing all requirements relating to fair and minimum wages and conditions of employment; to provide equal opportunity to all employees or persons, without regard to their race, sex, color, religion, ancestry, national origin, age disability, veteran status or sexual orientation, and remaining at all times in compliance with all executive orders issued or that may be issued by federal or state agencies with regard to equality of opportunity, including those dealing with affirmative action.
- 2.2 University agrees to provide all cooperation reasonably necessary for such compliance. In addition, Contractor shall also comply with all University Police Department, parking and other policies and regulations as may currently and/or in the future pertain to service under the contract. These laws, ordinances, regulations and policies shall apply to the contract throughout and they will be deemed to be included in the contract the same as though written out in full.
- 2.3 The Contractor shall secure and pay for all federal, state and local licenses and permits required in the operation of their business. Contractors shall also pay for any and all taxes and assessments attributable to its association with the providing of services requested

herein including but not limited to sales taxes, excise taxes, property taxes and federal, state and local income taxes.

2.4 The Contractor will assure that all payroll checks are covered with sufficient funds prior to issuance of checks. Contractor will also timely pay all associated Worker's Compensation, Social Security, related payroll taxes or benefits as may be required by city, state or federal law and retirement benefits.

2.4.1 Discovery of payroll-related infractions will be grounds for immediate contract termination with 30 days written notice. Such termination may occur without notice of a "cure" period unless proven to be a banking error.

2.5 By submitting a proposal, contractor agrees to comply with the following:

2.5.1 It is agreed between Provider and Wright State that, notwithstanding anything to the contrary in the Agreement or in any prior or subsequent addendums or amendments to the Agreement, Wright State and Provider shall comply with all applicable provisions of the Identity Theft Red Flags Rule, 16 C.F.R. § 681 (2007) ("Red Flags Rule") and any comparable laws, rules or regulations promulgated by any federal or state government or agency involving identity theft red flags and notice of address discrepancy, including any applicable future amendments or revision to the Red Flags Rule or other laws, rules or regulations. Without limiting the generality of the preceding sentence, Provider agrees to comply with any identity theft red flag and address discrepancy program ("Red Flag Program") promulgated by Wright State and to take all necessary steps, including developing its own Red Flag Program, to protect any identity information received pursuant to the Agreement.

2.6 This Agreement shall be governed by and in accordance with the laws of the State of Ohio. Any legal action arising pursuant to this Agreement shall be brought in a court of competent jurisdiction in the State of Ohio.

### **3. OBSERVANCE OF UNIVERSITY PARKING REGULATIONS**

3.1 Contractors are prohibited from parking on sidewalks and near buildings. Parking near buildings for short duration's for delivery of materials is permissible.

3.2 Contractor vehicles parked on sidewalks will be subject to traffic citations.

- 3.3 Contractor vehicles must have proper parking passes shown on windshields. Parking passes can be obtained from Wright State University Parking and Transportation Department. Rates and permit information can be obtained by contacting Parking and Transportation at 937 775-5690.

#### **4. DAMAGE AND INSURANCE**

- 4.1 The Contractor shall protect from damage all existing University and/or State of Ohio property in so far as performance of this contract affects said property.
- 4.2 Should damage occur, it is the Contractor's responsibility to restore the property to its original condition.
- 4.3 Should Contractors fail to restore the damaged property to its original condition, the Owner (or its Agent) will do so and assign the cost to the Contractor responsible for damages.
- 4.4 Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by this contractor, his agents, representatives, employees, or subcontractors.
- 4.5 The insurance requirements herein are minimum requirements for this contract and in no way limit the indemnity covenants contained in this contract. The University in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees, or subcontractors, and Contractor is free to purchase additional insurance as may be determined necessary.
- 4.6 **Minimum Scope and Limits of Insurance:** Contractors shall provide coverage with limits of liability not less than those stated. An excess liability policy or umbrella liability policy may be used to meet the minimum requirements provided that the coverage is written on the "following form" basis.
- 4.6.1 **Commercial General Liability – Occurrence Form:** Policy shall include bodily injury, property damage, and liability assumed under insured contract, including defense costs.
- 4.6.1.1. The policy shall be endorsed to include the following additional insured language: the State of Ohio, Wright State

University, Members of the Board of Wright State University and its Officers, its affiliated organizations, successors, or assignees, its officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor.

- 4.6.1.2. Minimum Limits:

<b>General Aggregate</b>	<b>\$2,000,000</b>
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000

4.6.2 **Automobile Liability (can be waived if contract does not involve use of motor vehicles):** Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this contract.

- 4.6.2.1. Minimum Limits:

<b>Bodily Injury/Property Damage (Each Accident)</b>	<b>\$1,000,000</b>
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4.6.3 **Workers' Compensation**

- 4.6.3.1. Minimum Limits:

<b>Workers' Compensation</b>	<b>Statutory</b>
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4.6.4 **Employers' Liability**

- 4.6.4.1. Minimum Limits:

<b>\$500,000</b>
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4.6.5 **Professional Liability (Errors and Omissions Liability), including Cyber Liability (can be waived if contract does not involve use of computer systems and/or electronic information):** The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of services of this contract.

- 4.6.5.1. In the event that the professional liability insurance required by this contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2)

years beginning at the time work under this contract is completed.

4.6.5.2. If such insurance is maintained on an occurrence form basis, Contractor shall maintain such insurance for an additional period of one (1) year following termination of contract. If such insurance is maintained on a claims-made basis, Contractor shall maintain such insurance for an additional period of three (3) years following termination of the contract.

4.6.5.3. If Contractor contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), then Contractor shall provide proof of same.

4.6.5.4. The insurance shall provide coverage for the following risks:

4.6.5.4.1. Liability arising from theft, dissemination, and/or use of confidential information (a defined term including, but not limited to, bank account information; credit card account information; and personal information, such as name, address, and social security numbers) stored or transmitted in electronic form.

4.6.5.4.2. Network security liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, unless caused by a mechanical or electrical failure.

4.6.5.4.3. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

4.6.5.5. Additional Requirements:

4.6.5.5.1. The policy shall provide a waiver of subrogation.

4.6.5.5.2. The policy shall be endorsed to include additional insured language such as: the State of Ohio, Wright State University, Members of the Board of Wright State University and its Officers, its affiliated organizations, successors, or assignees, its officials, trustees,

employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor.

4.6.5.5.2.1. Minimum Limits for Service Contracts under \$500,000;  
**Per Loss** **\$1,000,000**  
Aggregate **\$1,000,000**

4.6.5.5.2.2. Minimum Limits for Service Contracts over \$500,000;  
**Per Loss** **\$3,000,000**  
Aggregate **\$3,000,000**

4.6.6 **Crime Coverage:** Coverage shall include employee dishonesty, forgery, or alteration and computer fraud. If Contractor is physically located on the University premises, third-party fidelity coverage extension shall apply.

4.6.6.1. The policy shall include coverage for all directors, officers, agents, and employees of the Contractor.

4.6.6.1.1. The bond or policy shall include coverage for extended theft and mysterious disappearance.

4.6.6.1.2. The bond or policy shall not contain a condition requiring an arrest and conviction.

4.6.6.1.3. Minimum Limits:

**Per Loss** **\$1,000,000**

4.7 **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:

4.7.1 On insurance policies where the University is named as an additional insured, the University shall be an additional insured to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this contract.

4.7.2 The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

4.8 **Notice of Cancellation:** Each insurance policy required by the insurance provisions of this contract shall provide the required coverage



and shall not be suspended, voided, or canceled except after prior written notice has been given to the University, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Evidence of cancellation must be provided by the insurance company by endorsement. The certificate of insurance must state that cancellation notification will be provided by the insurance company in accordance with the policy's cancellation provisions.

- 4.9 **Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Ohio and with an "A.M. Best" rating of not less than A- VII. The University in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- 4.10 **Verification of Coverage:** Contractor shall furnish the University with certificates of insurance (ACCORD form or equivalent) as required by this contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 4.10.1 All certificates and any required endorsements are to be received and approved by the University before work commences. Each insurance policy required by this contract must be in effect at or prior to commencement of work under this contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this contract or to provide evidence of renewal is a material breach of contract.
- 4.10.2 All certificates required by this contract shall be emailed directly to [coi-procurement@wright.edu](mailto:coi-procurement@wright.edu) . The project/contract number and project description shall be noted on the certificate of insurance. The University reserves the right to require complete, certified copies of all insurance policies required by this contract at any time.
- 4.11 **Subcontractors:** Contractors' certificate shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the University separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 4.12 **Approval:** Any modification or variation from the insurance requirements in this contract shall be made by the risk management department, whose decision shall be final. Such action will not require a formal contract amendment but may be made by administrative action.
- 4.13 The Contractor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising

out of any injury, including death, or alleged injury, or damage or alleged damage to property sustained or allegedly sustained in connection with or to have arisen out of the performance of the work by the Contractor, its agents, servants, and employees or Subcontractors. This includes losses, expenses, and damages sustained by the Owner. Each Contractor shall indemnify and hold harmless the Owner and its agents, servants and employees from foregoing and any such losses, expenses, damages, demands and claims. Each Contractor shall, to the extent permitted by law, defend any suit or action brought against the Owner, its agents, servants and employees based upon such alleged injury or damage, and shall pay all damages, cost and expenses, including attorney's fees, in connection therewith or resulting therefrom.

- 4.14 "Injury" or "damage" as these words are used in this text, shall be construed to include, but not be limited to:
- 4.14.1 Injury or alleged injury, damage or alleged damaged, consequent upon the failure of, or the use or misuse by a Contractor, its agents, servants or employees of any kinds of equipment and materials, whether or not owned or furnished by the owner.
  - 4.14.2 Injury or alleged injury, damage or alleged damaged, arising from the manufacture, use or sale of any patented or unpatented invention, article or appliance in the performance of this contract, including use by or for the benefit of the owner.
- 4.15 The Owner will not be held responsible for any equipment or merchandise owned/leased by the Contractor which is lost, stolen or damaged while on the Owner's premises.
- 4.16 A Contractor shall immediately notify the Owner of the loss, destruction or damage to property and equipment of the Owner caused by a Contractor; and shall furnish the Owner with a statement concerning such loss in detail as the Owner may require. This includes the loss of samples issued by a Contractor to the Owner.
- 4.17 Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage.
- 4.18 Contractors shall be responsible for any lost keys including repair of damaged locks, or any re-keying needed to ensure security. Contractors shall also be responsible for any lost or damaged pagers, cell phones, radios, badges, etc.
- 4.19 Within thirty (30) days of signing the contract, the Contractor shall deliver certificates of insurance evidencing such policy or policies. These

certificates of insurance are to name the University as additional insured on all policies.

- 4.20 Unless otherwise agreed to by the parties, each of the parties of any resulting contract have the status of an independent business agent. As such, each party will be responsible for its own acts and will be responsible, to the extent permitted by law, for all damages, costs and expenses which arise out of the performance of this contract and which are due solely to that party's own negligence of its agents, officers and employees.

## **5. INDEMNIFICATION**

- 5.1 Each of the parties to this Agreement has the status of an independent contractor. Contractor shall agree to indemnify and hold the University, the University's Board of Trustees, officers, employees, and agents harmless, from any and all claims, actions proceedings, judicial or otherwise, judgments, damages, costs, expenses and reasonable attorneys' fees, arising from or in connection with its responsibilities under this Agreement.

## **6. RIGHTS RESERVED BY THE UNIVERSITY**

- 6.1 The University reserves the right to negotiate the details of any proposed contract resulting from this competitive negotiation process with the successful bidder(s). The University may request clarifications from any proposer prior to entering into or during any resulting negotiations.
- 6.2 The University reserves the right to analyze proposals and award to the most responsive and responsible Contractor as follows:
- 6.2.1 After review and negotiations, make one award for all defined areas or to award any portion to one bidder if the University determines to perform a portion of the service with its employees, temporary staffing, or a combination thereof. This includes the possibility of owner determining not to make any award and perform all work with its own workforce.
- 6.2.2 Should the University enter into negotiations for the purpose of reaching a mutually agreeable contract and be unsuccessful within a reasonable time, the University reserves the right to close negotiations and enter into negotiations with other contractors that submitted proposals for services outlined in this ITN.

- 6.3 Right to Audit

- 6.3.1 The Contractor shall establish and maintain a reasonable accounting system that enables the University to readily identify the Contractor's assets, expenses, cost of goods, and use of funds. The University and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid caps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- 6.3.2 The Contractor shall, at all times during the term of this contract and for a period of ten (10) years after completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the University, whether during or after completion of this contract, and at the Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) to the University. Such records shall be made available to the University during normal business hours at the Contractor's office or place of business and subject to a three (3) day written notice/without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the University.
- 6.3.3 The Contractor shall ensure the University has these rights with the Contractor's employees, agents, assigns, successors, and subcontractors and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the University. Failure to relay these audit rights to the subcontractors, and they neither keep the required documentation or cooperate with an audit will result in the Contractor bearing the full costs of the audit.

- 6.3.4 Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the University unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the University in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the University for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the University may recoup the costs of the audit work and any overcharges from the Contractor. Any adjustments and/or payments that must be made within a reasonable amount of time (not to exceed 90 days) from presentation of the University's findings to the Contractor.
- 6.4 The University reserves the right to request removal from campus without cause, any contractor employee if it is deemed to be in the best interest of the University.
- 6.5 It is the policy of the University that a Contractor may not advertise the fact that its firm has contracted with the University for goods and/or services without written permission from the University.

## **7. PRICING AND PAYMENT TERMS**

- 7.1 All prices, rates or discounts **must be firm**. Check your proposal carefully, for it may not be changed or corrected after the date fixed for proposal closing. Bidder will be expected to deliver at the price(s) quoted, except for the situation in which prices are reduced between the time the response to this ITN is prepared and the date of delivery. In that case, the lower price shall be charged.
- 7.2 The award will be made on unit price(s) basis, after evaluation of proposal less applicable cash discounts (if cash discount is 2% or greater). Cash discounts of 2% or greater offered in the proposal will be taken by the University upon receipt of each invoice.
- 7.2.1 Successful contractors offering cash discounts **MUST** print the discount terms on all invoices. Failure to do so will be cause for the university to be permitted to take the cash discount after the number of days the cash discount was offered for has passed.
- 7.3 Quotes/proposals are requested F.O.B. Destination. Unless clearly otherwise stated by the bidder/proposer, prices indicated will be considered to include all charges for transportation, packaging, crates, etc. necessary to complete delivery on an F.O.B. Destination basis. If

pricing F.O.B. Shipping Point include freight estimate and full value insurance cost.

- 7.4 After the initial award, any additions or deletions to the scope of work will be by mutual agreement and confirmed in writing.

## **8. TAXES**

- 8.1 The Owner is a tax-exempt institution and is free from all State and Federal taxes. No such taxes shall be included in the Contractor's charges to the Owner. However, the Contractor may be liable for the payment of sales and use taxes on materials which it purchases for the fulfillment of any resulting contract.

## **9. TERMINATION AND TERMS OF CONTRACT**

- 9.1 In the event the selected Contractor breaches any of the terms and provisions of the contract, the University reserves the right to accurately and specifically describe the unsatisfactory condition in a written notice to the Contractor and expect that this be corrected within a thirty (30) day period from the date the notice is received by the Contractor. If the described condition is not corrected satisfactorily within this time period, a thirty (30) day notice of cancellation of the contract may be given to the Contractor, by registered or certified mail. Upon providing such written notice, the University may solicit the services or support described herein from other sources and may hold the Contractor responsible for any and all excess costs or for any and all losses occasioned thereby. A meeting may be called by either party to review problem resolution.
- 9.2 Either party may terminate the Contract at any time for any reason with no less than 90 day notice, given by registered or certified mail.
- 9.3 If, during the term of the contract, a Contractor should be adjudged bankrupt, become insolvent, make general assignment for the benefit of creditors, cease conducting business in the normal course, suffer or permit the appointment of a receiver for its business or assets, or shall otherwise become the subject of proceedings under the Federal Bankruptcy Act or any other statute of any state relative to insolvency or protection of rights of creditors, then the University may issue a written notice of termination of the contract by registered or certified mail to the Contractor and may terminate the contract immediately and without further notice.
- 9.4 Non-Appropriation of Funds. A resultant agreement may be canceled without further obligation on the part of the University in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. The vendor will be notified in writing of such non-appropriation at the earliest opportunity.

- 9.5 The failure of either the Contractor or the University to insist upon strict performance of any of the terms or conditions of the contract shall not be construed as a waiver or relinquishment of the future of any such term or condition and the same shall be and remain in full force and effect.
- 9.6 If either party is prevented from performing under the contract because of fire, explosion, water, civil disorders, labor disputes, vandalism, acts of God, energy related closings, other casualties, or other disturbances beyond the control of either of the parties, the disruptions shall not be considered a default of the terms of the contract.
- 9.7 Either party to the contract may make a written request for a review of its provisions and terms at any time and may agree to amend to revise any or all provisions and terms. All such mutually agreed upon adjustments must be in writing, signed by the authorized representatives of both parties, and the contract amended to include same.
- 9.8 Neither party shall assign or transfer the contract or any part of same nor enter into any subcontracts for services under this contract without the prior written approval of the other party.
- 9.9 The Contractor will provide services / products as described herein as an independent Contractor of the University, not as the University's agent or representative. The Contractor shall not, in any manner, use the credit or the name of the University in connection with its business or affairs except as specifically authorized in the contract or as approved in writing prior to such use by the University.
- 9.10 Each company shall be solely responsible for all costs resulting from the preparation and delivery of their quote/proposal.
- 9.10.1 All materials submitted in response to this ITN shall become the property of the University upon delivery and are to be appended to any formal documentation which would further define or expand the contractual relationship of the University and the proposer.
- 9.10.2 Any samples requested as necessary for award decision must be furnished as requested, free of any expense, and, if not destroyed or required as future quality standard on items shipped, will upon request be returned at the proposer's expense. Except for material of substantial value, right is reserved to mutilate.
- 9.11 Inspection, Approval, Warranty - All articles sold and materials and work supplied hereunder shall conform to the specifications, drawings, samples or other description furnished by the UNIVERSITY, and will be

of good quality, free from any defects, and fit and sufficient for the purposes intended. All goods delivered or work provided shall be delivered free from any security interest, lien, encumbrance, or other claim of any third person. These warranties shall survive inspection, acceptance, passage of title, and payment by the UNIVERSITY. All goods delivered or work provided shall be received subject to inspection and approval by the UNIVERSITY. The UNIVERSITY's inspection, failure to inspect or reject, nor payment therefore, shall relieve the SELLER of any obligation hereunder, and such inspection shall not exclude any warranties in respect to such goods delivered or work provided.

- 9.12 Use of Designs, Data, etc. Bidder/Proposer agrees to keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by the University and such items only in the production of items awarded as a result of this quote/proposal and not otherwise, unless the University's written consent is first obtained. Upon demand or completion of resultant purchase order, bidder/proposer shall return all such items to the University or make disposition thereof as maybe directed or approved by the University.
- 9.13 Patents - The vendor warrants that the material delivered, either alone or in combination with other materials, will not infringe on any patents in the United States or any foreign country.
- 9.14 "Authorized Reseller" - All new equipment sold to Wright State University must be from an "Authorized Reseller". Reseller certification must be made available upon request. Original Equipment Manufacturer's warranty must be valid for the purchasing entity. No "Gray Market" equipment will be accepted.
- 9.15 Bid process results and the contract resulting from your proposal will be a matter of public record. Any specific proprietary information contained in the response must be clearly marked trade secret in accordance with O.R.C. 1333.61-69.
- 9.16 The contractor shall be required to ask questions on its employment application which include at a minimum, the following:

**Convictions**

Have you ever been convicted of a felony (i.e.: burglary, rape, murder, and/or other serious crimes)?

\_\_\_ Yes \_\_\_ No



If yes, list convictions below. (Note: A conviction may or may not have resulted in confinement. A record of conviction is not an automatic bar to employment).

Date of Conviction	City & State	Charge	Penalty Assessed
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- If the contractor has a form in use with similar wording, it shall be submitted for approval prior to commencement of a contract.
- Contractor shall be willing to share employment applications or background checks with the University upon request.
- If the contractor uses a third party company to conduct criminal background checks, this will fulfill the above requirement in lieu of the contractor asking the question on its employment form.

#### **10. CONFLICT OF INTEREST**

Furthermore, by submission of its proposal, the Proposer certifies that no known relationship exists between the Proposer, its employees, owners, officers or shareholders and Wright State University, its employees or any member of their families. The Proposer must make full disclosure of any known relationship or potential conflict of interest.

#### **11. PROHIBITION OF OFFSHORE OUTSOURCING**

The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.

<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>

The Contractor also affirms, understands, and agrees to immediately notify Wright State University of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

The Contractor also agrees to disclose if requested by Wright State University all of the following:

- The location where all services under this Contract will be performed by the Contractor or any subcontractor;
- The location where any state data associated with any of the services the Contractor is performing under this Contract, or seek to provide will be accessed, tested, maintained, backed-up or stored;
- The principal location of business for the Contractor and all subcontractors who are supplying services under this Contract.

If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. Wright State University, is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to Wright State University all funds paid for those services. Wright State University may also recover from the Contractor all costs associated with any corrective action Wright State University may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

Wright State University may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. Wright State University may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If Wright State University determines that actual and direct damages are uncertain or difficult to ascertain, Wright State University in its sole discretion may recover a payment of liquidated damages in the amount of two percent of the value of the Contract.

Wright State University in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, Wright State University may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding Wright State University permitting a period of time to cure the breach or the Contractor's cure of the breach, Wright State University does not waive any of its rights and remedies provided Wright State University in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

The Contractor will not assign any of its rights, nor delegate any of its duties

and responsibilities under this Contract, without prior written consent of Wright State University. Any assignment or delegation not consented to may be deemed void by Wright State University.

## **12. SUSTAINABILITY / “GREEN” PRODUCTS**

Wright State University will consider purchasing certified “green” products when available. If you are able to provide an equivalent alternative “green” product, please do the following:

- Quote the standard product(s) as specified (“non-green”) on the appropriate lines of this document.
- If you are able to quote an equivalent certified “green” product, please note under your standard pricing the following note: “See attached alternative green product pricing.” It is the responsibility of the supplier to then fully describe the product and list the applicable price and delivery.

The University will consider buying “green” products when the pricing is comparable to the standard product pricing. The decision is solely that of the University.

## **13. BIOBASED PRODUCTS**

**Biobased Products Preference.** Pursuant to Sections 125.092 to 125.093 of the Ohio Revised Code, the bidder may offer a biobased product in lieu of a substantially equivalent non-biobased product. Only those biobased products appearing in the BioPreferred Catalog maintained by the United States Department of Agriculture (U.S.D.A.) are eligible for consideration. DAS has adopted the USDA BioPreferred Catalog as the official list of biobased products that will qualify for the preference. The Catalog can be located on the State Procurement Website at: [www.ohio.gov/procure](http://www.ohio.gov/procure), click on “Help and Reference Materials”.

When evaluating a biobased product, the biobased product must meet the performance standards set forth in the bid, must be readily available and must not be unreasonably priced. To determine if the biobased product is not unreasonably priced a percentage, not to exceed five percent, may be applied to the price of the lowest substantially equivalent non-biobased product. If the biobased product is within the five percent range, the award may be placed with biobased product. Bidding Agency may also compare the price of the biobased product with the fair market value of substantially equivalent non-biobased products to determine if the price is unreasonable.

### **IF SUBMITTING A BIOBASED PRODUCT:**

A bidder offering a biobased product shall complete the following certification to be considered for the preference. This certification must be

completed, signed and included as part of the bid response submitted prior to the due date.

Bidder or Offeror Certification:

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this contract and I hereby certify that the biobased products (within the categories of items listed by the United States Department of Agriculture) to be used or delivered in the performance of the contract will comply with the applicable specifications or other contractual requirements.

I further certify that the biobased products being offered are listed as a designated item as determined by the USDA and the biobased products have been tested by an ASTM/ISO compliant test facility using the ASTM International Radioisotope Standard Method D 6866 for testing and I can verify this testing upon request of the state of Ohio.

\_\_\_\_\_  
Signature of officer or employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Company

#### **14. BUY AMERICA / BUY OHIO**

**PLEASE COMPLETE AND INCLUDE THE FOLLOWING THREE (3) PAGES  
WITH YOUR PROPOSAL**

## **BUY AMERICA / BUY OHIO**

### **PREFERENCE TO UNITED STATES AND OHIO PRODUCTS:**

State of Ohio AM. H.B. 271 requires that preference be given to products produced or mined in the United States and in Ohio.

#### **A. BUY AMERICA**

Bids will be evaluated to determine that a Bidder's offering is for a "Domestic Source End Product," as defined in the Federal Buy America Act., 41 U.S.C.A., Section 10a-10d. Any Bidder's offering that does not meet this requirement shall be rejected, except in those circumstances where a determination has been made that certain articles, materials and supplies are not mined, produced, or manufactured in the U.S., in sufficient and reasonably available commercial quantities and of a satisfactory quality.

#### **B. BUY OHIO**

1. Following the above determination, all remaining bids and quotations shall be evaluated so as to give preference to Ohio bids or bidders who are located in a border state, provided that the border state imposes no greater restrictions than contained in Sections 125.09 and 125.11 of the Ohio Revised Code.
2. Ohio products are defined as products mined, excavated, produced, manufactured, raised or grown in the state by a person where the input of Ohio products, labor, skill, or other services constitutes no less than 25% of the manufactured cost.
3. Bidders having a significant Ohio economic presence in terms of the numbers of employees or capital investment a bidder has in the state, shall qualify for award of contract on the same basis as if their products were produced in Ohio.
4. Where it has been determined that selection of the lowest Ohio bid, if any, will not result in an excessive price or a disproportionately inferior produce or service, the contract shall be awarded to the low Ohio bid at the bid price quoted. Where it is advantageous to award the contract to other than an Ohio bid or bid from a border state, then the contract shall be awarded accordingly. ("Excessive Price" shall be construed to mean a price that exceeds by more than five percent (5%) the lowest price submitted on a non-Ohio bid).

#### **C. HOW TO QUALIFY UNDER THESE PROGRAMS:**

To qualify for the domestic Ohio preference (Buy Ohio), or to qualify as having significant Ohio economic presence, pursuant to Sections 125.09 and 125.11 of the Ohio Revised Code and Section 123:5-1-26, of the Ohio Administrative Code, bidders must complete the information on the attached form and return it with their bid.

### **BUY AMERICA CERTIFICATION**

The bidder hereby certifies that each product offered in this bid response is a domestic source end product pursuant to Sections 125.09 and 125.11 of the Ohio Revised Code and Section 123:5-1-26 of the Ohio Administrative Code, and the Federal “Buy America Act” and corresponding rules thereto. Exceptions are as follows:

Item \_\_\_\_\_ Mfg. Location  
\_\_\_\_\_

Item \_\_\_\_\_ Mfg. Location  
\_\_\_\_\_

Item \_\_\_\_\_ Mfg. Location  
\_\_\_\_\_

CERTIFIED: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

**CERTIFICATION FOR BUY OHIO/SIGNIFICANT OHIO ECONOMIC PRESENCE**

Failure to complete this form will result in the bidder receiving no consideration for Buy Ohio or Buy America preference.

1. Do you have facilities within Ohio?  (yes)  (no)

Type of facilities:  Sales Offices  
 Manufacturing  
 Other

Please specify if "other" \_\_\_\_\_  
\_\_\_\_\_

2. Do you pay taxes due the State of Ohio?  (yes)  (no)

3. If the bidder is a corporation, are you Registered with the Secretary of State?  (yes)  (no)

4. Are products offered in this bid Manufactured in Ohio?  (yes)  (no)

5. If applicable, are the products offered Mined in Ohio?  (yes)  (no)

6. Are your products located in a border State that poses no greater restrictions Than those contained in Sections 125.09 And 125.11 of the Ohio Revised Code?  (yes)  (no)