TERMS AND CONDITIONS

1 BIDDING REQUIREMENTS

Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.

Bid prices are requested to be firm for AGENCY acceptance for 30 days from bid opening date. 'Discount from list' bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.

Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificates are available upon request.

TTUHSC reserves the right to accept or reject all or any part of any kind, waive minor technicalities and award the bid to best serve the interests of the State.

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

2 SPECIFICATION

Unless otherwise specified, items shall be new and unused and of current production.

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and bid number. TTUHSC nor the State of Texas will be bound by any oral statement or representation contrary to the written specifications of this solicitation. Manufacturer's standard warranty shall apply unless otherwise stated in the SOLICITATION.

3. TIE BIDS Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) (3) and 113.8 (Preferences).

4. DELIVERY

If delay is foreseen, vendor shall give written notice to the TTUHSC Purchasing Office. Vendor must keep TTUHSC Purchasing Office advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TTUHSC Purchasing to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.

No substitutions permitted without written approval of TTUHSC Purchasing Office.

Delivery shall be made during normal working hours only, unless prior approval has been obtained from TTUHSC Purchasing.

5. INSPECTION AND TESTS

All goods will be subject to inspection and test by TTUHSC personnel. TTUHSC personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT

A response to this SOLICITATION is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Lubbock County, Texas.

7. AUTHORITY TO CONDUCT AUDITS

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor’s Office, or any successor agency to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor’s Office or its successor in the conduct of the audit or investigation, including providing all records.
requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract awards.

8. PATENTS OR COPYRIGHTS

The Vendor shall defend, indemnify, and hold harmless TTUHSC and the State of Texas from all claims involving infringement of patents and/or copyrights.

9. VENDOR ASSIGNMENTS

Vendor hereby assigns to TTUHSC any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

10. BIDDER AFFIRMATION

10.1 Submitting this bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists. By submission, the bidder hereby certifies that:

10.2 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.

10.3 Neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws (see section 9, above), nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

10.4 Pursuant to Section 2155.004 Government Code, the bidder has not received compensation for participation in the preparation of the specifications for this SOLICITATION.

10.5 Pursuant to Section 231.006 (d), Family Code, re: child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

10.6 All Sex offenders required to register with local law enforcement authorities under chapter 62 of the Texas Code of Criminal Procedure and who intend to work or carry on a vocation (full-time or part-time) on any campus of Texas Tech University System for a consecutive period exceeding fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year are required to register (or verify registration) with the law enforcement authority for campus security in accordance with article 62.064 of the Texas Code of Criminal Procedure within 7 days of beginning work on any campus of Texas Tech University System. In addition, such sex offenders are required to notify the law enforcement authority for campus security within seven (7) days of terminating work on any Campus of Texas Tech University System. For additional information, please contact the Texas Tech University Police Department, 2901 4th St., Lubbock, Tx 79409, 806-742-3931.

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

10.8 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, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.

10.9 Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

10.10 Bidder certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:

Name of Former executive: __________________________________________________________

Name of State agency: _______________________________________________________________

Date of separation from State agency: Position with bidder: __________________________________

Date of Employment with bidder: _________________________________________________________

10.11 Bidder agrees to comply with Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas.
10.12 Bidder certifies that he is not currently disbarred from doing business with the State of Texas or the Federal Government of the United States.

10.13 SANCTION OR EXCLUSION SEARCH - Vendor warrants that neither it or any of its employees or agents who provide items or services under this Agreement is excluded from participation in any federal or state health care program or federally funded contracts. TTUHSC shall initially and periodically thereafter conduct searches of Vendor’s name against various federal and state sanction and exclusion databases, including, but not limited to the Federal Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE), the General Services Administration Excluded Parties List System (EPLS) and the Texas Health and Human Services Commission Exclusion List. Vendor agrees to immediately inform TTUHSC if it or any of its employees providing items or services under the Agreement are subject to the imposition of any such sanctions or exclusion. The Agreement shall be subject to immediate termination at TTUHSC’s sole discretion in the event Vendor, or any of its employees, agents or contractors, is listed on any federal or state sanction/exclusion list as being subject to sanctions or exclusion.

Cooperation with TTUHSC’s Compliance Programs. TTUHSC is an entity subject to the Deficit Reduction Act of 2005 and is required to establish and disseminate policies to be adopted by its contractors and agents. Accordingly, Vendor agrees that it will comply with federal, state or local laws or regulations applicable to Vendor’s performance under the Agreement. Vendor further agrees that it will comply with applicable TTUHSC Operating Policies and Procedures located at http://www.TTUHSC.edu/HSC/OP, including, but not limited to HSC OP 10.08, Ethics Policy, HSC OP 10.22, Compliance and Ethics Line, and HSC OP 10.24, Non-Retaliation Policy, as well as all relevant published TTUHSC compliance programs, which are available on its website: http://www.TTUHSC.edu. If Vendor performs coding/billing services or provides health care items or services on behalf of TTUHSC, upon request from TTUHSC’s Billing Compliance Office, Vendor agrees to participate in TTUHSC’s billing compliance training sessions.

10.14 By submitting a bid/proposal, the bidder/proposer is certifying that neither the owner(s), nor any employee who may be involved in the bid process or in the performance of any resulting contract, is in a dual employment position as a TTUHSC employee. In addition, the bidder/proposer is certifying that the owner(s) nor any employee who may be involved in the bid process or in the performance of any resulting contract is not related in any manner with any TTUHSC employee or related in any manner with any member of the Board of Regents or any legislative representative of the district in which TTUHSC is located. If such relationship exists, then that relationship shall be disclosed during the bid/proposal process to the Purchasing Office. If the status of any owner(s) or employee changes during the course of the contract, then that relationship shall be disclosed immediately to the Purchasing Office. Any violation of this conflict of interest policy shall result in immediate cancellation of any resulting contract/purchasing order.

10.15 REPORTING - Vendor agrees to inform TTUHSC of any violation of its obligations under this Agreement or the Agreement regarding compliance, and of any conduct of which it becomes aware related to the performance of the Vendor’s obligations under the Agreement by it or any of its employees, agents or contractors, or by TTUHSC or any of its agents, employees or contractors, which a reasonable person would conclude may violate any of the legal or regulatory requirements identified herein, may represent or be the product of a conflict of interest, kickback or other inducement, or otherwise constitute fraud, waste or abuse. Such reporting may be to Texas Tech Compliance and Ethics Line (1-866-294-9352) or to the Institutional Compliance Officer (806-743-3950).

10.16 BREACH- Vendor’s breach of any of the provisions of these terms shall constitute a material breach of the Agreement and may result in immediate termination of the Agreement by TTUHSC. Vendor's breach shall entitle TTUHSC to any of the remedies provided in the Agreement in addition to any remedies provided by law.

11. NOTE TO BIDDER

Any terms and conditions submitted with a bid will not be considered unless specifically referred to in the bid response. Terms and conditions submitted by a bidder/proposer that conflict with the TTUHSC terms and conditions may result in disqualification of the bid.

12. DISPUTE RESOLUTION

The dispute resolution process provided for in the Texas Government Code, Chapter 2260 shall be used, as further described herein, by the University and the Contractor in an attempt to resolve any unresolved claim for breach of contract arising under this Agreement and made by the Contractor:

A Contractor’s claim for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to the Director of Purchasing. Said notice specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the University and the Contractor that are otherwise entitled to notice under this Agreement. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.

The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Contractor’s sole and exclusive process for seeking a remedy for an alleged breach of contract by the University if the Parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the Civil Practices and...
Remedies Code.

NEITHER THE EXECUTION OF THIS CONTRACT BY THE UNIVERSITY NOR ANY OTHER CONDUCT OF ANY REPRESENTATIVE OF THE UNIVERSITY RELATING TO THE CONTRACT SHALL BE CONSIDERED A WAIVER OF THE UNIVERSITY’S SOVEREIGN IMMUNITY TO SUIT.

The dispute resolution process provided for in Government Code Chapter 2260 will not, at any time, affect the University’s right or ability to bring suit against the Contractor for disputes arising under this Agreement, nor will it affect the University’s ability to assert all claims and defenses in a lawsuit.

Pursuant to Chapter 2260, the submission, processing and resolution of the Contractor’s claim is governed by the published rules adopted by the Texas Attorney General’s Office, as currently effective, hereafter enacted or subsequently amended.

An event of claim for breach of contract is not grounds for the Contractor to suspend performance under this Agreement.

13. PUBLIC INFORMATION

Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act).

14. FUNDING OUT CLAUSE

Any contract that crosses the current funded State of Texas Biennium may be cancelled with written notice by the AGENCY if funds are not appropriated by the State of Texas to the AGENCY.

15. The Cooperating Institution shall comply with all provisions of Executive Order No. 11246 of Sept. 24 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.