

UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE STANDARD TERMS AND CONDITIONS

General

The following standard terms and conditions are automatically incorporated by reference as part of any formal solicitation for commodities and services issued by University of Arkansas - Pulaski Technical College (also referred to as “the College” or “UA-PTC”), including requests for proposals, requests for qualifications and requests for sealed bids; as such, these terms and conditions should be carefully reviewed by a potential supplier when submitting a formal response to a solicitation by the College.

Any Special Terms and Conditions included in a solicitation issued by the College supersede the respective language in these Standard Terms and Conditions. Standard Terms and Conditions and any Special Terms and Conditions become part of the contract entered into if any or all parts of the potential supplier’s bid or proposal is accepted by University of Arkansas - Pulaski Technical College.

6.1 Legal Considerations

The proposed contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the College regarding this request for proposal or any resultant contract shall be brought in the State of Arkansas administrative or judicial forums. Venue will be Pulaski County, Arkansas.

6.2 Conflict of Interest

No official or employee of University of Arkansas - Pulaski Technical College and no other public official of the State of Arkansas or the Federal government shall participate directly or indirectly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract or subcontract, and any solicitation or proposal thereto in which, to the employee's knowledge:

- A. The employee or any member of the employee's immediate family has a financial interest;
- B. A business or organization has a financial interest in which business or organization the employee, or any member of the employee's immediate family has a financial interest; or
- C. Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement standard, rendering of advice, investigation, audit, or in any other capacity. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Director of the Department of Finance and Administration.

6.3 Warranty against Broker's Fee

The contractor warrants that it has not been retained or retained a person to be retained, to solicit or secure a State contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or a bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the College shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

6.4 Employment of State Personnel

A. Contemporaneous Employment Prohibited. It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the State agency by which the employee is employed.

B. Restrictions on Former Employees in Matters Connected with Their Former Duties.

1. **Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.** It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the State in connection with any:

- a. Judicial or other proceeding, application, request for a ruling, or other determination;
- b. Contract;
- c. Claim; or
- d. Charge or controversy in which the employee participating personally and substantially through decision, approval, disapproval, recommendation, rendering of service, investigation, or otherwise while an employee, where the State is a party or has a direct and substantial interest.

2. **One (1) Year Representation Restriction Regarding Matters for Which a Former Employee was Officially Responsible.** It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

- a. Judicial or other proceeding, application, request for a ruling, or other determination;
- b. Contract;
- c. Claim; or
- d. Charge or controversy in which the employee participating personally and substantially through decision, approval, disapproval, recommendation, rendering of service, investigation, or otherwise while an employee, where the State is a party or has a direct and substantial interest.

C. Disqualification of Partners

1. **When Partner is a State Employee.** It shall be a breach of ethical standards for a person who is a partner of an employee knowingly to act as a principal or as an agent for anyone other than the State in connection with any:
 - a. Judicial or other proceeding, application, request for a ruling, or other determination;
 - b. Contract;
 - c. Claim;
 - d. Charge or controversy, to knowingly act as a principal or as an agent for anyone other than the State in matters which were within the former employee's official responsibility, where the State is a party or has a direct and substantial interest.
2. **When Partner is a Former State Employee.** It shall be a breach of ethical standards for a partner of a former employee to knowingly act as an agent for anyone other than the State where such former employee is barred under Subsection (B) of this Section.

D. Selling to College/State after Termination of Employment is prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services to the College/State for one (1) year following the date employment ceased. The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specification, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with the College/State. This Section is not intended to preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations.

6.5 Termination of Contract

The contract resulting from this request for proposal shall be subject to the following termination provisions. The contract may be terminated by the College:

- For default
- For convenience
- For unavailability of funds

6.5.1 Termination for Default

The College/State may terminate this contract in whole, or in part, when the College determines that the contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to cure such failure within a

reasonable period of time specified by the College, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as Termination for Default."

In the event of termination for default, in full or in part as provided by this clause, the College may procure, upon such terms and in such manner as the College may deem appropriate, supplies or services similar to those terminated, and the contractor shall be liable to the College for any excess costs for such similar supplies or services. In addition, the contractor shall be liable to the College for administrative costs incurred by the College in procuring such similar supplies or services.

In the event of termination for default, the contractor shall be paid for those deliverables which the contractor has delivered to the College. Payments for completed deliverables delivered to and approved by the College shall be at the contract price. Payment for partially completed deliverables delivered to and not yet approved by the College shall be an amount determined by the College.

The rights and remedies of the College provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

6.5.2 Termination for Convenience

The College may terminate performance of work under the contract in whole or in part whenever the College shall reasonably determine that such termination is in the best interest of the College.

Upon receipt of notice of termination for convenience, the contractor shall be paid the following:

1. At the contract price(s) for completed deliverables delivered to and accepted by the College;
2. At a price mutually agreed by the contractor and the College for partially completed deliverables.

6.5.3 Termination for Unavailability of Funds

In the event that Federal and/or State funds for the contract become unavailable, the College shall have the right to terminate the contract without penalty upon the same terms and conditions as a termination for convenience. Availability of funds will be determined at the sole discretion of the College.

6.5.4 Procedure on Termination

Upon delivery by certified mail to the contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the contractor shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials or services;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. Assign to the College in the manner and to the extent directed by the Contract Administrator all of the right, title, and interest of the contractor under the orders or subcontracts so terminated, in which case the College shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. With the approval or ratification of the Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the contract;
6. Transfer title to the College (to the extent that the title has not already been transferred) and deliver in the manner, at the time, and extent directed by the Contract Administrator, all files, processing systems (excluding equipment and operating systems), data manuals, or other documentation, in any form, that relate to the work terminated by the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination;
8. Take such action as may be necessary, or as the Contract Administrator may direct, for the protection and preservation of the property to the contract that is in the possession of the contractor and in which the College has or may acquire an interest.

The contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

6.6 Termination Claims

After receipt of a Notice of Termination, the contractor shall submit to the Contract Administrator any termination claim in the form and with the certification prescribed by the Contract Administrator. Such claims shall be submitted promptly. The contractor and the College may agree upon the amounts to be paid to the contractor by reason of the total or partial termination of work pursuant to this article. The contract shall be amended accordingly.

In the event of the failure of the contractor and the College to agree in whole or in part as to the amounts with respect to costs to be paid to the contractor in connection with the total or partial termination of work pursuant to this article, the College shall determine on the basis of information available, the amount, if any, due to the contractor by reason of termination and

shall pay to the contractor the amount so determined. The contractor shall have the right of appeal, as stated under Disputes, from any such determination made by the Contract Administrator.

6.7 Indemnification of State

The parties acknowledge that School's ability to indemnify supplier is limited by Article 12, § 12 of the Arkansas Constitution and the holding of *Entergy Arkansas, Inc. v. Arkansas Pub. Serv. Commission & Arkansas Tech Univ.*, 2011 Ark. App. 453 (*review denied*, Ark. Supreme Court, Case No. 11-662, December 8, 2011).

With respect to any claims, liability, costs, expenses, demands, settlements, or judgments resulting from the College's negligence, actions or omissions of itself or its own representatives, directors, and employees relating to or arising under this Agreement, any such claims against the College must be presented to the Arkansas State Claims Commission.

The College agrees that in any Arkansas State Claims Commission proceeding that: (1) it will cooperate with supplier and its affiliates in the defense of any action or claim brought against supplier and its affiliates seeking the foregoing damages or relief; (2) it will in good faith cooperate with supplier and its affiliates should supplier and its affiliates present any claim of the foregoing nature against University of Arkansas - Pulaski Technical College to the Claims Commission of the State of Arkansas; (3) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, that the College reserves the right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission.

6.8 Contractor

It is expressly agreed that the contractor and any subcontractors and agents, officers, and employees of the contractor or any subcontractors in the performance of this contract shall act in an independent capacity and not as officers or employees of the College. It is further expressly agreed that this contract shall not be construed as a partnership or joint venture between the contractor or subcontractor and the College.

6.9 Contracting Condition

The successful bidder and any entity or person directly or indirectly controlled by, under common control with, or controlling the bidder will not acquire any interest, direct or indirect, which would conflict in any manner or disagree with the performance of its services hereunder. The bidder further covenants that in the performance of the contract no person having any such known interest shall be employed. No official or employee of the State and no other public official of the State of Arkansas or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest direct or indirect, in this contract or proposed contract.

The supplier must certify that to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this proposal, been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, or violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government Entity (Federal, State or Local) with commission of any of these offenses enumerated Above; and have not within a three-year period preceding this proposal, had one or more public transactions (Federal, State or Local) terminated for cause or default.

6.9 Force Majeure

The contractor will not be liable for any excess cost to University of Arkansas - Pulaski Technical College if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God, fires, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the contractor.

6.10 Confidentiality of Information

The contractor shall treat all information, and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract as confidential information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder.

Unless clearly marked as “confidential” or “proprietary,” the College considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential or non-proprietary nature and therefore shall be subject to public disclosure after an agreement is awarded.

Financial data, trade secrets, test data, and similar proprietary information will, to the extent permitted by law, remain confidential provided such material is clearly marked by the respondent as “confidential” or “proprietary” when the RFP is submitted.

ALL SUBMITTALS, INCLUDING ANY EXECUTED CONTRACT OR AGREEMENT RESULTING FROM THIS SOLICITATION, WILL BE AVAILABLE FOR REVIEW TO THE EXTENT PERMISSIBLE, PURSUANT TO THE ARKANSAS FREEDOM OF INFORMATION ACT 25-19-10-1 ET SEQ.

6.11 Public Disclosure

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of ACA, Sections 25-19-101 et seq. The use or disclosure of information concerning recipients will be limited to purposes directly connected with the administration of the contract.

6.12 Inspection of Work Performed

The State of Arkansas, University of Arkansas - Pulaski Technical College, or their authorized representatives shall, at all reasonable times, have the right to enter into contractor's premises, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work being performed.

The contractor and all subcontractors must provide access to all reasonable facilities and provide assistance, if deemed necessary by the requesting agency/personnel. All inspections and evaluations shall be performed in such manner as will not unduly delay work.

6.13 Subcontracts

The contractor is fully responsible for all work performed under the contract.

The contractor may, with the consent of the College, enter into written subcontract(s) for performance of certain of its functions under the contract. Subcontracts must be approved in writing by the Contract Administrator prior to the effective date of any subcontract.

No subcontract which the contractor entered into with respect to performance under the contract shall in any way relieve the contractor of any responsibility for performance of its duties.

The contractor shall give the Contract Administrator immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or supplier which, in the opinion of the contractor, may result in litigation related in any way to the contract or the State.

6.14 Assignment

The contractor shall not assign the contract in whole or in part or any payment arising therein without the prior written consent of the Contract Administrator.

6.15 Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and

undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

6.16 State Property – Care by Contractor

The contractor shall be responsible for the proper custody and care of any State-owned property furnished for contractor's use in connection with the performance of this contract and the contractor will reimburse the State for its loss or damage, normal wear and tear expected.

6.17 Contract Variations

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the College and the contractor shall be relieved of all obligations arising under such provision; if the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

6.18 Attorney's Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, in the event the State prevails, the Contractor shall pay all expenses of such action including attorney's fees and all costs of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

6.19 Liability

In the event of non-performance of contractual obligation by the contractor or his agents which results in the determination by Federal authorities of non-compliance with Federal regulations and standards, the contractor will be liable to the College in full for all penalties, sanctions and disallowance assessed against the College.

6.20 Records Retention

In accordance with Federal regulation, the contractor agrees to retain all pertinent records for five (5) years after final payment is made under this contract or any related subcontract. In the event any audit, litigation or other action involving these pertinent records is started before the end of the five (5) year period, the contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

6.21 Access to Contractor's Records

In accordance with Federal regulation governing contracts in excess of \$10,000, the contractor consents to the required access to pertinent records. This access will be granted upon request, to State or Federal Government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the contractor, which are directly pertinent to any services performed under the contract. The contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the pertinent records of subcontractors.

6.22 Acceptance and Rejection of Proposals

UA-PTC reserves the right to accept or reject all or any part of a proposal(s) or any and all proposals, to waive minor technicalities, and to award the proposal that best serves the interest of the College and the State of Arkansas. This solicitation does not in any way commit the College to a contract for the commodities or services listed herein. The College may, at the discretion of the Purchasing Department, waive any technicalities or minor irregularities in bids submitted which have no effect on the material substance of a submitted bid if it is in the best interests of the College and the state of Arkansas to do so.

6.23 Signature

Failure to sign a proposal will disqualify it. The person signing the proposal should show title or authority to bind his firm in a contract. Signature means a manual or an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is (a) unique to a person using it; (b) capable of verification; (c) under the sole control of the person using it; (d) linked to data in a manner that if the data re changed, the electronic signature is invalidated.

6.24 Unit Prices

Bid pricing on the unit price to include FOB destination to the College. In case of errors in extension, unit prices shall govern. Prices are firm and not subject to escalation unless otherwise specified in the solicitation invitation opening date. "Discount from list" proposals are not acceptable unless requested; "time" or "cash" discounts will not be considered. Quantity discounts should be included in the priced offered.

6.25 Quantities

The quantities stated on "firm" contracts are actual requirements of the College. The quantities stated in "term" contracts are estimates only, and are not guaranteed. Bids should represent a unit price on the estimated quantity based on the unit of measure specified in the solicitation. The College may order more or less than the estimated quantity on any "term" contract.

6.26 Brand Name References

Unless the specifications in a solicitation issued by the College states “No Substitutes”, any catalog brand name or manufacturer’s reference used in a solicitation is descriptive only, not restrictive and used to indicate the type and quality desired. Unless otherwise specified herein, bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the proposal must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer’s illustrations and complete descriptions of the product offered. UA-PTC reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the College may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in a solicitation. If the bidder takes no exception to specifications or reference date, the bidder will be required to furnish the product according to brand names, numbers, etc. as specified in this invitation.

6.27 Guaranty

All items bid shall 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 bid invitation. The bidder hereby 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 it was furnished. The bidder further guarantees that if the items furnished hereunder are to be installed by the bidder, such items will function properly with installed. The bidder also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The bidder’s obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified herein.

6.28 Samples

Samples or demonstrators, when requested must be furnished free of expense to UA-PTC. If samples are not destroyed during reasonable examination they will be returned at bidder’s expense, if requested, within ten days following the opening of proposals. All demonstrators (“demos”) will be returned after reasonable examination. Samples should show bidder’s name, address, proposal and item number.

6.29 Testing Procedures for Specification Compliance

Tests may be performed on samples or demonstrators submitted with the bid or 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 reasonable cost of the testing shall be borne by the bidder.

6.30 Alterations to Proposals

A respondent's proposal cannot be altered or otherwise modified after the official stated bid opening except where permitted by Arkansas Procurement Laws & Regulations or as the result of amendment(s) to the original solicitation issued by University of Arkansas - Pulaski Technical College.

6.31 Taxes and Trade Discounts

Do not include state, county, city or local sales taxes shall not be included in a bid price unless such taxes are specifically requested in the solicitation. Trade discounts should be deducted from the unit price and net price should be shown in the bid.

6.32 Award

Any contract or purchase order issued as the result of a solicitation shall be awarded with reasonable promptness by written notice to the successful bidder whose proposal meets the requirements and criteria set forth in the solicitation. The College reserves the right to award item(s) listed in a solicitation as "all or none," "individually," by "groups," or by any other method deemed to be in the best interest of the College as determined by the College's Agency Procurement Official or his or her designee. In the event all proposals exceed available funds as certified by the appropriate fiscal officer, the Agency Procurement Official is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate any adjustment of the submitted pricing, including changes in the solicitation requirements, with a bidder, in order to bring the proposal within the amount of available funds.

6.33 Delivery on Contracts

The solicitation will clearly state the number of days to place a commodity, equipment and/or service in the College's designated location under normal conditions. If the awarded contractor cannot meet the stated terms of delivery, alternate delivery schedules may become a factor in an award. The University of Arkansas - Pulaski Technical College Purchasing Department has the right to extend delivery if reasons appear valid. If the awarded contractor cannot meet the delivery date, UA-PTC reserves the right to procure the item(s) elsewhere and any differential costs between those proposed by the awardee and the alternate supplier will be borne by the awarded contractor.

6.34 Delivery Requirements

No substitutions or cancellations are permitted without written authorization of the College's Purchasing Department. Delivery shall be made during work hours only, 8:00 am to 4:30 p.m., Monday through Friday excluding legal holidays, unless prior approval by the UA-PTC Purchasing Department for other delivery specifications has been obtained. Packing slips and all other literature necessary to proper receipt of the items shall be enclosed with each shipment.

6.35 Default

All commodities, equipment or services furnished will be subject to inspection and acceptance by the College subsequent to delivery. Back orders, default in promised delivery, or failure to meet specifications enables, at its discretion, the College's Purchasing Department to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge any differential costs, if any, to the defaulting contractor. The contractor must give written notice to UA-PTC of the reason and the expected revised delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.

6.36 Variation in Quantity

University of Arkansas - Pulaski Technical College assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the purchase order or contract.

6.37 Authorization to Ship

The only authorization to process, ship, or otherwise process and deliver any quote, order, or shipment placed on behalf of University of Arkansas - Pulaski Technical College **is an individually numbered, signed, form-printed purchase order or executed contract issued as the result of a solicitation from the College prior to delivery.** No verbal, e-mailed, faxed or other communication may be substituted as prior authorization to ship. University of Arkansas - Pulaski Technical College reserves the right to refuse payment to a vendor for any goods or services received as the result of any process other than the above procedures for an Authorization to Ship.

6.38 Disposition of College and State Property

Any specifications, drawings, technical information, dies, cuts, negatives, positives, data, or any other items furnished to the contractor in contemplation hereunder shall remain the property of University of Arkansas - Pulaski Technical College, be kept confidential to the extent allowed by Arkansas law, be used only as expressly authorized, and returned at the contractor's expense to the FOB point, properly identifying what is being returned.

6.39 Intellectual Property Indemnity

The contractor agrees to indemnify and hold University of Arkansas - Pulaski Technical College and the state of Arkansas harmless from all claims, damages, and costs including attorneys' fees, arising from infringement of intellectual property rights, including patents, trademarks and copyrights.

6.40 Invoicing

The contractor shall be paid upon the completion of all the following: (1) delivery and acceptance of the commodities or services; (2) submission of a properly itemized invoice, with the specified number of copies that reflect the contract or purchase order number(s), item(s), quantity and pricing; (3) and the proper and legal processing of the invoice by the College. Invoices shall be sent to the following address:

University of Arkansas - Pulaski Technical College
Attn: Accounts Payable
3000 West Scenic Drive
North Little Rock, AR 72118
accountspayable@pulaskitech.edu

6.41 Lack of Funds

University of Arkansas - Pulaski Technical College may cancel this contract to the extent that funds are no longer legally available for expenditure. The College will return any delivered but unpaid for commodities in normal condition to the contractor. If the College 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.

6.42 Discrimination

In order to comply with the provision of Arkansas Act 54 of 1977, relating to unfair employment practices, bidder agrees as follows: (a) bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, disability, or national origin. (b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, disability or national origin; (c) bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose determining compliance with the statute; (d) failure of the bidder/contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be canceled, terminated or suspended in whole or in part; (e) the bidder will include the provision of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

6.43 Antitrust Assignment

As part of the consideration for entering into any contract pursuant to this solicitation, the bidder identified therein, acting herein by he authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the College and the state of Arkansas, all rights, title, and interest in and to all causes of action it may have under the antitrust laws of the United States or the State of Arkansas for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased produced by this State pursuant to any resulting contract with the College.

6.44 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:

1. 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;
2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
4. 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;
5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
6. Integrating into networks used to share communications among employees, program

- participants, and the public;
7. 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.

6.45 Cancellation

Either party may cancel any contract or item award, for cause, by giving a thirty (30) day written notice of intent to cancel. Cause for the College to cancel will include, but is not limited to, cost exceeding current market prices for comparable purchases, request for increase in prices during the period of the contract, or failure to perform to contract conditions. The contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expirations, or cancellation. Cancellation by the College does not relieve the contractor of any liability arising out of fault or nonperformance. If a contract is canceled due to a request for increase in pricing, or failure to perform, that contractor will be removed from the relevant bidder list for a period up to twenty-four (24) months. Cause for the supplier to cancel a contract will include, but is not limited to, the item(s) being discontinued and unavailable from the manufacturer or non-payment of invoices by the College.

6.46 Alteration of Formal (Sealed) Solicitation Documents

The original written or electronic language of this solicitation shall not be changed or altered, except by approved written addendum issued by the University of Arkansas - Pulaski Technical College Purchasing Department. This does not eliminate a potential supplier from taking exception(s) to these documents, but does signify that said potential supplier cannot change the original document's written or electronic language. If a potential supplier wishes to make exception(s) to any of the original language they must be submitted in a separate written or electronic communication in a manner that clearly explains the exception(s). If a potential supplier's submittal is discovered to contain alterations or changes to the original written or electronic documents, the vendor's/contractor's response may be declared as "non-responsible" and ineligible for further consideration.

6.47 Sovereign Immunity

Nothing in this agreement shall be construed to waive the sovereign immunity of the state of Arkansas or any entity or agency thereof, including University of Arkansas - Pulaski Technical College.

6.48 Protests

Any protest concerning the award of a contract shall be decided by the Agency Procurement Official (APO) or an authorized representative of the APO in the College's Purchasing Department. Protests shall be made in writing to the Purchasing Department and shall be filed within fourteen (14) days of issuance of award notification(s). A protest is considered filed when received by the Purchasing Department. The written protest shall include the name and address of the protestor, identification of the procurement, and a statement of the specific reasons for the

protest and supporting exhibits. The Purchasing Department will respond to the written protest within seven (7) days. The College's decision relative to the protest shall be final.

- 6.49** In cases of disputes as to whether or not an item or service quoted or delivered meets specifications, the decision of the College's Purchasing Department, or authorized representatives, shall be final and binding on all parties.

6.50 Venue and Laws Governing Disputes

Pursuant to Article 5 Section 20 of the Arkansas Constitution, which provides that an Arkansas state agency does not have the authority to waive the state's sovereign immunity, the venue or jurisdiction for any and all disputes arising from a contractual agreement shall be the State of Arkansas, and only the laws of Arkansas shall be applied to the dispute.

6.51 Ethical Standards

In accordance with Ark. Code Ann. § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than ten thousand dollars (\$10,000): "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state 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."

END OF UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE
STANDARD TERMS AND CONDITIONS FOR ALL SOLICITATIONS