

Attachment A
Texas A&M Forest Service
Terms and Conditions

1. BID REQUIREMENTS

- 1.1 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.
- 1.2 Bidders must bid the price per unit shown. Unit prices shall govern in the event of extension errors.
- 1.3 Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.4 Quote F.O.B. destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.5 Bid prices are requested to be firm for TFS acceptance for 90 days from opening date. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.6 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initialed by Bidder or his authorized agent. No Bid can be withdrawn after opening time without approval by TFS Purchasing Office based on a written acceptable reason.
- 1.7 Purchases made for TFS are exempt from the State Sales tax and Federal Excise tax. Do not include tax in quotation. Excise Tax Exemption Certificate will be furnished by TFS upon request.
- 1.8 TFS reserves the right to accept or reject all or any part of any Bid, waive minor technicalities and award the Bid to best serve the interests of the TFS.

2. SPECIFICATIONS

- 2.1 Unless otherwise specified, items shall be new and unused and of current production.
- 2.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.3 TFS will not be bound by any oral statement or representation contrary to the written specifications of this Request for Bid (RFP).
- 2.4 Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3. TIE BIDS

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Awards will be made in accordance with TAC Rule 20.36 (b) (3) and 20.38 (preferences).

4. DELIVERY

- 4.1 Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates Bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause Bid to be disregarded.
- 4.2 If delay is foreseen, contractor shall give written notice to TFS. Contractor must keep TFS advised at all times of order status. Default of promised delivery (without accepted reasons) or failure to meet specifications authorizes TFS to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting contractor.
- 4.3 No substitutions permitted without TFS written approval.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TFS.
- 4.5 Each shipment must be accompanied by a packing slip which shows the TFS Purchase Order number and the description, quantity shipped and any back-ordered quantity for each item shipped. Each package must be clearly marked with the destination address and TFS Purchase Order number.

5. INSPECTION AND TESTS

All goods will be subject to inspection and test by TFS. Authorized TFS personnel shall have access to any 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 contractor 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 TFS' option, will be returned to the contractor or held for disposition at contractor's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT

A response to this RFP 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 TFS purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas, and as same may be amended. Any legal action must be filed in Brazos County, Texas. The TFS may grant relief from performance of the contract if the contractor is prevented from compliance

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and performance by the act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the contractor. To obtain release on Force Majure, the contractor must file a written request to the TFS.

7. PAYMENT

TFS's payment shall be made in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.

8. PATENTS OR COPYRIGHTS

Contractor agrees to protect the TFS from claims involving infringement of patents or copyrights.

9. CONTRACTOR ASSIGNMENTS

Contractor hereby assigns to TFS 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). Inquiries pertaining to quotation must give the quotation number and opening date.

10. BIDDER AFFIRMATION

Signing this Bid with a false statement is a material breach of contract and shall void the submitted Bid or any resulting contracts, and the Bidder shall be removed from all Bid lists. By signature hereon affixed, the Bidder hereby certifies that:

10.1 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 quotation.

10.2 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, nor communicated directly or indirectly the Bid made to any competitor or any other person engaged in such line of business.

10.3 Pursuant to Section 2155.004(a) Government Code the Bidder has not received compensation for participation in the preparation of the specification for this RFP.

10.4 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.

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- 10.5 Pursuant to Section 2155.004(b) Government Code the Bidder certifies that the individual or business entity name in this Bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 10.6 The Contractor 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 of performance of this contract.
- 10.7 Bidder agrees that any payment due under this contract will be applied towards eliminating any debt or delinquency, regardless of when it arises, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 10.8 Bidder agrees to comply with Government Code 2155.4441, pertaining to service contract use of products in the State of Texas.
11. NOTE TO BIDDER
- Any terms and conditions attached to a Bid will not be considered. Such terms and conditions may result in disqualification of the Bid.
12. DISPUTE RESOLUTION
- To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TFS and CONTRACTOR to attempt to resolve any claim for breach of contract made by CONTRACTOR that cannot be resolved in the ordinary course of business. CONTRACTOR shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of TFS, who shall examine CONTRACTOR's claim and any counterclaim and negotiate with CONTRACTOR in an effort to resolve the claim. This provision and nothing in this Agreement waives TFS's sovereign immunity to suit or liability, and TFS has not waived its right to seek redress in the courts.
13. PUBLIC DISCLOSURE
- CONTRACTOR acknowledges that TFS is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TFS's written request, and at no cost to TFS, CONTRACTOR will promptly provide specified contracting information exchanged or created under this Agreement for or on

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behalf of TFS to TFS in a non-proprietary format acceptable to TFS that is accessible by the public. CONTRACTOR acknowledges that TFS may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and CONTRACTOR agrees that this Agreement can be terminated if CONTRACTOR knowingly or intentionally fails to comply with the requirements of that subchapter.

14. REHAB ACT, VEVRAA, SECTION 503

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibits discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

15. CONFLICT OF INTEREST

By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no TFS of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

16. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISREAL

Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2270 applies to this Agreement, CONTRACTOR certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. CONTRACTOR acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

17. CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

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18. PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING

Under Section 2155.0061, Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

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

20. ACCESS BY INDIVIDUALS WITH DISABILITIES

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

21. STATE AUDITOR'S OFFICE

CONTRACTOR understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. CONTRACTOR agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. CONTRACTOR will include this provision in all contracts with permitted subcontractors.

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22. PAYMENT OF DEBT OR DELINQUENCY TO THE STATE

Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, CONTRACTOR agrees that any payments owing to CONTRACTOR under this Agreement may be applied directly toward certain debts or delinquencies that CONTRACTOR owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

23. LOSS OF FUNDING

Performance by TFS under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TFS will issue written notice to CONTRACTOR and TFS may terminate this Agreement without further duty or obligation hereunder. CONTRACTOR acknowledges that appropriation of funds is beyond the control of TFS. In the event of a termination or cancellation under this Section, TFS will not be liable to CONTRACTOR for any damages that are caused or associated with such termination or cancellation.

24. EXPORT CONTROLS

The following provision applies if contractor is a U.S. entity. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. CONTRACTOR certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

The following provision applies if contractor is not a U.S. entity. TFS is subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and its obligations under this Agreement are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by CONTRACTOR that CONTRACTOR will not export data or commodities to certain countries without advance approval of that agency. TFS neither represents that a license will not be required nor that, if required, it will be issued. CONTRACTOR

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shall comply with all applicable export laws and regulations and may not export or allow the export or re-export of commodities or technical data in violation of those laws or regulations. CONTRACTOR certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

25. REFUND OF DEPOSIT/PREPAYMENT

In the event this Agreement is canceled and/or terminated by CONTRACTOR for reason not attributable to TFS or if canceled and/or terminated by TFS for default of performance by CONTRACTOR, then within thirty (30) days after cancellation and/or termination, CONTRACTOR will reimburse TFS for all advance payments paid by TFS to CONTRACTOR that were (a) not earned by CONTRACTOR prior to cancellation and/or termination, or (b) for goods or services that the TFS did not receive from CONTRACTOR prior to cancellation and/or termination.

26. FRANCHISE TAX CERTIFICATION

If CONTRACTOR is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then CONTRACTOR certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that CONTRACTOR is exempt from the payment of franchise (margin) taxes.

27. PRIOR EMPLOYMENT

CONTRACTOR acknowledges that Section 2252.901, Texas Government Code, prohibits TFS from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by TFS during the twelve (12) month period immediately prior to the effective date of the Agreement. If CONTRACTOR is an individual, by signing this Agreement, CONTRACTOR represents and warrants that it is not a former or retired employee of TFS that was employed by TFS during the twelve (12) month period immediately prior to the effective date of the Agreement.

28. CONFLICT OF INTEREST

CONTRACTOR certifies, to the best of their knowledge and belief, that no TFS of the A&M System Board of Regents, or any officer of TFS or the A&M System, has a direct or indirect financial interest in CONTRACTOR or in the transaction that is the subject of the Agreement.

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29. NOT ELIGIBLE FOR REHIRE

CONTRACTOR is responsible for ensuring that its employees involved in any work being performed for TFS under this Agreement have not been designated as “Not Eligible for Rehire” as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 (“NEFR Employee”). In the event TFS becomes aware that CONTRACTOR has a NEFR Employee involved in any work being performed under this Agreement, TFS will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by TFS.

30. USE OF NAME

Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its “Marks”), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.

31. INDEPENDENT CONTRACTOR

Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by CONTRACTOR’s service to TFS. As an independent contractor, CONTRACTOR is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. Except as specifically required under the terms of this Agreement, CONTRACTOR (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of TFS or the A&M System.

32. NON-ASSIGNMENT

CONTRACTOR shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TFS.

33. REPRESENTATIONS & WARRANTIES

If CONTRACTOR is a business entity, CONTRACTOR warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and

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deliver this Agreement, and the individual executing this Agreement on behalf of CONTRACTOR has been duly authorized to act for and bind CONTRACTOR.

34. FORCE MAJEURE

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

35. GOVERNING LAW AND VENUE

The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, nonperformance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against TFS is to be in the county in which the principal office of TFS's governing officer is located (Brazos County, Texas).

36. LIMITATIONS

As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of TFS to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on TFS's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on TFS except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this

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Agreement by TFS nor any other conduct, action, or inaction of any representative of TFS relating to this Agreement constitutes or is intended to constitute a waiver of TFS's or the state's sovereign immunity.

37. SEVERABILITY

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

38. SURVIVAL

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

39. ENTIRE AGREEMENT

This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both Parties.