

Montana State University Standard Terms and Conditions

By submitting a response to an invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, purchase order or agreement, the vendor agrees to acceptance of the following Montana State University Standard Terms and Conditions and any other provisions that are specific to an invitation for bid, request for proposal, limited solicitation or acceptance of a contract, purchase order or agreement. Vendor further agrees that these terms and conditions shall take precedence over any conflicting terms and conditions.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The University reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the University. Bids, proposals, and limited solicitation responses will be firm for thirty (30) days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the University, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the University or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the University's solicitation document and a vendor's response, the language contained in the University's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and debarment.

ARBITRATION: The University does not agree to submit to binding arbitration. Any provision in an agreement which requires the University to submit to binding arbitration is invalid and unenforceable.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer, or subcontract any portion of the contract without the express written consent of the University. (Section 18-4-141, MCA.)

ATTORNEYS' FEES: The University shall pay attorney's fees and other costs only in accordance with Section 25-10-711, MCA.

AUTHORITY: The attached bid, request for proposal, limited solicitation, contract, or purchase order is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. A contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects' subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the University's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

COOPERATIVE PURCHASING: Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of participating in cooperative purchasing agreements for the procurement of supplies or services. Therefore, if agreeable to the bidder/offeror, during the term of this contract, other units of the Montana University System may choose to contract for similar goods/services so long as the prices, terms, and conditions are equal to or more favorable than those in this contract. However, Montana State University Procurement makes no guarantee of any additional Montana University System participation.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the University.

DISABILITY ACCOMMODATIONS: The University does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

EMPLOYMENT: University shall follow all applicable law and university policy for the hiring of public employees. Any provision prohibiting or penalizing University for hiring an employee of Vendor is invalid.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by University Procurement prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the University may, in its discretion, suspend the bidder/offeror for a period of time from entering any contracts with the University.

FORCE MAJEURE: Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control that make the contract impossible, impracticable, or frustrate the purpose of the contract, including but not limited to: acts or omissions of government or military authority; acts of God; government or court orders, guidelines, regulations, or actions related to communicable diseases, epidemics, pandemics, or other dangers to public health; materials shortages; transportation delays; fires; floods; labor disturbances; riots; wars; terrorist acts; or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays if reasonable to do so. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. A force majeure condition excuses a party's obligations under this contract, unless the parties mutually agree that the obligation is merely suspended because of the condition.

HOLD HARMLESS/INDEMNIFICATION: The Vendor agrees to protect, defend, and save the University, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Vendor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Vendor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the University, under this agreement.

University shall be liable only for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees when acting within the scope of their employment, to the extent permitted under the Montana Tort Claims Act (Mont. Code Ann. § 2-9-108). With respect to loss, expense, damage, liability, claims or demands arising from the negligence or misconduct of the University, University agrees that it will cooperate with Vendor in the defense of any action or claim brought against Vendor seeking the foregoing damage or relief, provided, however, the University reserves its right to assert in good faith all claims and defenses available to it in any proceeding. Nothing in the parties' agreement shall be construed as an express or implied waiver by MSU of any applicable governmental or sovereign immunity, as an express or implied acceptance by the University of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of any liabilities allowable under Montana law, as a pledge of the full faith and credit of any state, or as the assumption by the University of a debt, contract or liability of the University in violation of Montana law.

INSURANCE: As an agency of the State of Montana, the University is self-insured according to Montana law. The statutory limits of liability are \$750,000 for each claim and \$1.5 million for each occurrence. The University may not name third parties as additional insured.

INTERGRATION: The parties agree that the University Standard Terms & Conditions shall control the parties' Agreement and any revisions or amendments to the Agreement and any terms of use, terms of service, end user license agreements, or click-through provisions. Any change, modification, or waiver of any term of this Agreement will not be valid unless it is in writing and signed by an authorized official of both the University and Vendor. In no event shall any "click through" or "end user license agreement" vary or otherwise modify the terms of the parties' Agreement.

INTEREST: In accordance with Section 17-8-242, MCA, University shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if University fails to make timely payment.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

LIMITATIONS OF LIABILITY: Any provision disclaiming direct damages caused by Vendor's negligence, misconduct, or breach of contract is invalid. In no event shall the liability of Vendor be limited to intellectual property infringement, confidentiality obligations, intentional torts, criminal acts, fraudulent conduct, or gross negligence.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the University is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate University electronic funds transfer payments.

PUBLIC HEALTH SITUATION: Either party may terminate this Agreement with prior written notice if the party determines a cancellation is in the best interest of public health or because any public health situation or government order, guideline, or action related to public health makes performance of the Agreement impossible, impracticable, or frustrates the purpose of the Agreement.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcpX>.

REDUCTION OF FUNDING: The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

SEVERABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal, and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify University Procurement of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Section 18-5-603, MCA.)

EIT STANDARDS: All Vendors selling information technology equipment and software to Montana State University must currently meet the WCAG 2.0 AA standards and be willing to certify that the software will be in compliance with such standards. More information on the WCAG 2.0 AA standards can be found here: <http://www.w3.org/WAI/intro/wcag.php>

TERM: The term shall be for the term mutually agreed upon in the contract, purchase order, or agreement. In the event no term is stated in the Agreement, the Agreement shall expire no later than one (1) year from the date of the Agreement. Agreements may not renew automatically and any such provisions in an agreement are invalid and unenforceable. All renewals shall be in writing and agreed to by the parties. The entire term of the Agreement, including all renewals, must comply with the term limitations of Section 18-4-313, MCA.

TERMINATION OF CONTRACT: Unless otherwise stated, the University may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNIVERSITY CONFIDENTIAL DATA: To the extent applicable, Vendor shall protect and maintain all University Confidential Data and any information derived therefrom in strict confidence. Specifically, and without limiting the generality of the foregoing, Vendor shall protect and maintain any and all "Education Records" of University students consistent with applicable FERPA regulations and shall cooperate fully with University in any request for information verifying such compliance. Vendor's transmission, transportation, or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except with prior written authorization by University. University Confidential Data shall be defined as 1) data designated by the University to Vendor as confidential; 2) data subject to state or federal privacy law, including the Family Education Rights and Privacy Act (FERPA); or 3) data that would be considered by a reasonable person to be confidential given its content and the circumstances of its disclosure. University's Expanded Data Security Terms will control if incorporated into the Agreement.

UNIVERSITY TRADEMARKS: Vendor may not use any University trademarks, service marks, logos, symbols, designs, or other marks without prior written approval from the University Communications office.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, subsequent contract, or purchase order, must be brought in the Eighteenth Judicial District in and for the County of Gallatin, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

WARRANTIES: The Contractor warrants that the products offered conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect. The Contractor further warrants that the products are new and unused and of the latest model or manufacture unless the University specifies otherwise. Exceptions will be rejected.

WARRANTY FOR HARDWARE: The contractor warrants that the hardware provided is free from defects in materials and workmanship and conforms to the specifications. The warranty period for the provided hardware is a fixed period commencing on the date specified in a statement of work or applicable contract. If the hardware does not function as warranted during the warranty period and the contractor is unable to either: i) make it do so; or ii) replace it with one that is at least functionally equivalent, the University may return it to the contractor for a full refund.

WARRANTY FOR SERVICES: The contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this contract. The University agrees to provide timely written notice of any failure to comply with this warranty so that the contractor can take corrective action.

WARRANTY FOR SOFTWARE: Upon initial installation of the software, the contractor warrants that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including on the contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

These warranties are the University's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.