

Terms and Conditions

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1. LEGAL AUTHORITY

The University is part of the State of Florida's State University System, established by article IX, section 7, of the Florida Constitution and governed generally by the Florida K-20 Education Code, chapters 1000 through 1013, Florida Statutes.

2. GENERAL TERMS

The following are the terms and conditions that will become part of the Contract between the University and the Successful Respondent. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following will be the order of precedence: the Contract; the ITN Solicitation; the Final Proposal.

2.1. Actions of Successful Respondent.

The University is under no obligation whatsoever to be bound by the actions of any Successful Respondent with respect to third parties. The Successful Respondent is not an agent of the University.

2.2. Americans with Disabilities Act.

The Successful Respondent must comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the Act.

2.3. Background Check.

All of Successful Respondent's employees who enter the University campus or premises must have passed an employer background check and must not be listed on the Florida or National Sex Offenders Registry.

2.4. Continuation of Performance through Termination.

The Successful Respondent shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

2.5. Default.

The University reserves the right to terminate the contract in whole or in part due to the failure of the Successful Respondent to comply with any term or condition of the contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the contract. The University shall provide written notice of the termination and the reasons for it to the Successful Respondent. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the Successful Respondent under the contract shall become the property of and be delivered to the University on demand. The University may, upon termination of the contract, procure, on terms and in the manner that it deems appropriate, materials, or services to replace those under the contract. The Successful Respondent shall be liable to the University for any excess cost incurred by the University in re-procuring the materials or services.

2.6. Defective Tender.

Every tender of goods must fully comply with all provisions of the contract as to time of delivery, quantity, and the like. Tender which does not fully conform, may constitute a breach and the Successful Respondent may not have the right to substitute a conforming tender.

2.7. Equal Opportunity Statement.

The Successful Respondent and any subcontractors must 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 qualified protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, national origin, disability, or veteran status.

2.8. Federal, State, Local Laws, and Regulation.

The Successful Respondent and any subcontractors must comply with all applicable laws, ordinances, and regulations and policies (including University regulations and policies), including, but not limited to, policies regarding sexual harassment, infectious disease transmission and protocols (expressly including but not limited to SARS- CoV-2/COVID19) and smoking on campus. In the event a violation occurs, University reserves the right to rescind the award. The Successful Respondent is solely responsible for keeping itself fully informed of and faithfully observing all laws, ordinances, and regulations and shall protect and indemnify the University, its officers and agents against any claims of liability arising from or based on any violation thereof.

2.9. Force Majeure.

In the event compliance with any obligation under the Contract is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure:" means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order or any other occurrence beyond the reasonable control of the party in question.

2.10. Gratuities.

The University may, by written notice to the Successful Respondent, cancel the Contract if it is discovered by the University that gratuities, in the form of entertainment, gifts or other, were offered or given by the Successful Respondent, or any agent or representative of the Successful Respondent, to any officer or employee of the University with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of the contract. In the event the contract is canceled by the University pursuant to this provision, University shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Successful Respondent in providing such gratuities.

2.11. Indemnification/Hold Harmless.

The Successful Respondent shall indemnify, defend, and hold harmless the Board of Trustees, Florida Polytechnic University, the State of Florida and the Florida Board of Governors, and their officers, agents, and employees from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any

person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Successful Respondent, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Contract.

The Successful Respondent's obligation under this provision shall not extend to any liability caused by the sole negligence of the Florida Polytechnic University, or its officers, agents, and employees. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by the Successful Respondent and third-party infringement under the Contract.

2.12. Insolvency.

The University shall have the right to terminate the Contract at any time in the event Successful Respondent files a petition in bankruptcy or is adjudicated bankrupt; or if a petition in bankruptcy is filed against Successful Respondent and not discharged within 30 days; or if Successful Respondent becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for Successful Respondent or its business.

2.13. Inspection and Audit.

All of Successful Respondent's books, accounts, reports, files, and other records relating to the Contract will be subject at all reasonable times to inspection and audit by the University or other relevant state entities.

2.14. Labor Disputes.

The Successful Respondent shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance of the contract.

2.15. Lack of Funds.

The contract may be canceled without further obligation on the part of the University in the event that sufficient appropriated funding is unavailable to assure full performance of the terms. The Successful Respondent shall be notified in writing of such non-appropriation as soon as reasonably possible. No penalty shall accrue to the University in the event this cancellation provision is exercised. This cancellation provision shall not be construed so as to permit the University to terminate the contract in order to acquire similar equipment, material, supplies or services from another party.

2.16. Prior Course of Dealings.

No trade usage, prior course of dealings, or course of performance under other agreements shall be a part of the Contract resulting from this ITN; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of the Contract.

2.17. Licensing Requirements.

To the extent applicable, successful Respondent will have all appropriate licenses to conduct business in the State of Florida and Polk County at or prior to award of a Contract and at all times during the term of the contract. Respondent must provide proof of such to the University upon request.

2.18. Parking.

The Successful Respondent will ensure that all of the Successful Respondent's and Successful Respondent's employees', agents', and subcontractors' vehicles parked on the

University premises have proper parking permits. All vehicles must be registered with and have parking permits purchased from the University's Parking and Transportation Services properly displayed. Successful Respondent and Successful Respondent's employees, agents and subcontractors will observe all parking regulations. The failure to purchase parking permits, properly display them, and otherwise comply with all the University's parking regulations could result in the ticketing and/or the towing of Successful Respondent's or Successful Respondent's employees', agents' and/or subcontractors' vehicles. For additional parking information, contact The University's Parking and Transportation at (863) 874-8432.

2.19. Respondent's Employment of Unauthorized Aliens.

Employment of unauthorized aliens is considered a violation of the Immigration and Nationality Act. If the Successful Respondent knowingly violates the act, the University may rescind the award or terminate the Contract. The Successful Respondent is required to use the E-Verify system and comply with the requirements of section 448.095, Florida Statutes.

2.20. Protection of Property.

The Successful Respondent shall at all times guard against damage or loss to the property of the University or of others and shall be held responsible for replacing or repairing any such loss or damage. The University may bill the Respondent or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the Respondent or its agents.

2.21. Right of Offset.

The University will be entitled to offset against any amount due the Successful Vendor, any expenses or costs incurred by the University, or damages assessed by the University concerning the Successful Vendor's non-conforming performance or failure to perform the contract, or any other debt owed the University, including expenses, costs, and damages.

2.22. Safety.

The University seeks to furnish its students and employees with a place of work and study that is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and one that complies with occupational health and safety standards promulgated under Occupational Safety and Health Act of 1970 (OSH ACT). Therefore, the Successful Respondent is required to comply with the occupational safety and health standards and all rules, regulations and orders issued pursuant to the OSH ACT while on the University's premises.

2.23. Sales and Use Tax.

The State of Florida and its agencies (including the University) are tax-immune and exempt from the payment of taxes. The Successful Respondent will be responsible to pay any such taxes imposed on taxable activities/services under the Contract.

2.24. Software Warranty and Back up.

If Successful Respondent is providing software to the University, Respondent warrants that:

1. the media on which the product software is distributed is free from defects in materials and workmanship, and
2. the product performs the functions described in the documentation for the product.

In addition, The University may create and retain a copy of the software and related

documentation for back up and disaster recovery purposes and for archival purposes. This provision will survive termination or expiration of the Contract.

2.25. Suspension or Debarment.

The University may by written notice to the Successful Respondent immediately terminate the Contract if the University determines that the Successful Respondent has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor vendor of any public procurement unit or other governmental body.

2.26. Termination for Convenience.

The University reserves the right to terminate the contract in whole or part at any time when in the best interests of the University without penalty or cause. Upon receipt of the written notice, the Successful Respondent shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University.

2.27. E- Verify

All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Respondent certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all of Respondent's employees hired by the Respondent during the term of this Agreement and/or while performing work or providing services for the University. Successful Respondent shall require that all subcontractors performing work or providing services on behalf of Successful Respondent for the University also comply with the requirements of §448.095, Fla. Stat and utilize the E-Verify system to verify employment eligibility of all employees hired by subcontractor. The Successful Respondent shall require for the subcontractor to provide to Successful Respondent an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Successful Respondent shall maintain a copy of such affidavit for the duration of the Agreement. The University may terminate this Agreement immediately upon notice to Successful Respondent for any violation of this provision. A Successful Respondent whose contract is terminated pursuant to this paragraph is liable for additional costs incurred by the University due to the termination of the Agreement.