UNIVERSITY OF MISSOURI
REQUEST FOR BID (RFB) / PROPOSAL (RFP)
GENERAL TERMS AND CONDITIONS
&
INSTRUCTIONS TO BIDDERS/RESPONDENTS

A. General Terms and Conditions

1. **Purpose:** The purpose of the solicitation is to require the furnishing of the highest quality equipment, supplies, material and/or service in accordance with the specifications. These documents, and any subsequent addenda, constitute the complete set of specification requirements and proposal response forms.

2. **Governing Laws and Regulations:** Any contract issued as a result of this RFB/RFP shall be construed according to the laws of the State of Missouri. Additionally, the contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.

3. **Taxes:** The contractor shall assume and pay all taxes and contributions including, but not limited to, State, Federal and Municipal which are payable by virtue of the furnishing and delivery of item(s) specified herein. Materials and services furnished the University are not subject to either Federal Excise Taxes or Missouri Sales Tax.

4. **Sovereign Immunity:** The Curators of the University of Missouri, due to its status as a state entity and its entitlement to sovereign immunity, is unable to accept contract provisions, which require The Curators to indemnify another party (537.600, RSMo). Any indemnity language in proposed terms and conditions will be modified to conform to language that The Curators are able to accept.

5. **Preference for Missouri Firms:** In accordance with University policy, preference shall be given to Missouri products, materials, services and firms when the goods or services to be provided are equally or better suited for the intended purpose and can be obtained without additional cost. Firms are considered "Missouri firms" if they maintain a regular place of business in the State of Missouri.

6. **Equal Opportunity and Non-Discrimination:** In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against any recipients of services, or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. The contractor shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities, and certain veterans. Contract clauses required by the United Sates Government in such circumstances are incorporated herein by reference.

7. **Supplier Diversity Participation:** It is the policy of the University of Missouri System to ensure full and equitable economic opportunities to all persons and businesses that compete for business with the University. The University's Supplier Diversity effort reflects that.

Diverse suppliers must be at least 51% owned and controlled by someone in one of the recognized groups (see below). Diverse suppliers should be certified from a recognized certifying agency. These firms can be a sole proprietorship, partnership, joint venture or corporation. The Supplier Diversity Participation Form located at www.umsystem.edu/media/fa/procurement/Supplier_Diversity_Participation_Form.docx provides a list of agencies that are recognized as certifying agencies. The definition of what counts as a diverse supplier for the University of Missouri System are: Minority (MBE: African-American, Hispanic, Native-American Asian Indian/Pacific), Women (WBE), Veterans (VBE-Includes Service Disabled) and Disadvantaged Business Enterprises (DBE/SDB). Again, these firms must be certified to be recognized by University of Missouri System Supply Chain (UMSSC).

Second Tier Diverse Supplier Spending and Reporting: The University strongly encourages Supplier Diversity participation in all of its contracts for goods and services. This may be as the primary supplier/contractor for the awarded business. Diverse suppliers can also be used as subcontractors by a majority-owned supplier to fulfill its contract with the University. This is called 2nd Tier spending. There are two ways this can be accomplished:

Direct 2nd Tier spending: This is diverse supplier spending by a first tier supplier of goods and/ or services that directly fulfills a UMSSC contract. The principle to follow— if the diverse supplier spending by the first tier supplier can be traced and tracked specifically to the contract, this is direct 2nd tier spending.

Example: Company A is a prime supplier of office products to UMSSC. Ink pens that are supplied to UMSSC are provided by a minority-owned business. This would be direct 2nd Tier. Dollars that can be tracked and traced to fulfilling the contract.

Indirect 2nd Tier spending: Calculates the 2nd Tier spending by prorating the prime supplier's company-wide diverse supplier spending with the percentage of its total business represented by the customer company's business.

Example: Company B spends $100,000 with a Veteran-owned landscaping company. UMSSC comprises 20% of that company's/subsidiary's overall business revenue. Company B can report $20,000 to UMSSC as indirect 2md Tier spending.

The Director of Supplier Diversity and Small Business Development can provide more detail.

Bidders/Respondents must indicate their Supplier Diversity participation levels committed to this contract on the Supplier Diversity Participation Form located at www.umsystem.edu/media/fa/procurement/Supplier_Diversity_Participation_Form.docx. The Bidder/Respondent must describe what suppliers and/or how the Bidder/Respondent will achieve the Supplier Diversity goals. Evaluation of bids/proposals shall include the proposed level of Supplier Diversity participation. Bids/Proposals that do not meet the participation requirements for Supplier Diversity will not receive any of the points during bid/proposal review.

Suppliers/contractors will be responsible for reporting diverse supplier participation on an agreed upon timing (e.g., quarterly, annually) when business is awarded.

The University will monitor the contractor/supplier's compliance in meeting the Supplier Diversity participation levels committed to in the awarded proposal. If the contractor/supplier's payments to participating diverse suppliers are less than the amount committed to in the contract, the University reserves the right to cancel the contract, suspend and/or debar the contractor/supplier from participating in future contracts. The University may retain payments to the contractor/supplier in an amount equal to the value of the Supplier Diversity participation commitment less actual payments made to diverse suppliers.

If a participating diverse supplier does not retain their certification and/or is unable to satisfactorily perform, the contractor/supplier must obtain other certified diverse suppliers, if available, to fulfill the Supplier Diversity participation requirements committed to in the awarded proposal. The contractor/supplier must obtain the written approval of the Chief Procurement Officer for any new diverse supplier. Additionally, if the Bidder/Respondent cannot find another diverse supplier replacement, documentation must be submitted to the Chief Procurement Officer detailing all good faith efforts made to find a replacement. The Chief Procurement Officer shall have sole discretion in determining if the actions taken by the contractor/supplier constitute a good faith effort to secure diverse supplier participation and whether the contract will be amended to change the Supplier Diversity participation commitment.

8. **Applicable Laws and Regulations:** The University serves from time to time as a contractor for the United States government. Accordingly, the provider of goods and/or services shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order

11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated herein by reference.

9. **Appropriation:** The Curators of the University of Missouri is a public corporation and, as such, cannot create indebtedness in any one year (the fiscal year beginning July 1 to June 30) above what they can pay out of the annual income of said year as set forth in 172.250, RSMo. Therefore, if the University determines it has not received adequate appropriations, budget allocations or income to enable it to meet the terms of this contract, the University reserves the right to cancel this contract with 30 days' notice.

10. **Applicable Health Related Laws and Regulations:** If these specifications or any resulting contract involves health care services or products, the Contractor agrees to maintain, and will further assure such compliance by its employees or subcontractors, the confidential nature of all information which may come to Contractor with regard to patients of the University. All services provided pursuant to this contract shall be provided in accordance with all applicable federal and state laws including The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, sections 261-264 (the Administrative Simplification sections) and the regulations promulgated pursuant thereto and regulations of the Joint Commission on Accreditation of Healthcare Organization and The Centers for Medicare & Medicaid Services (CMS).

    Respondents understand and agree that the Curators of the University of Missouri, in the operation of the University Hospitals and Clinics, is regulated under federal or state laws with regard to contracting with vendors. The Contractor represents that it is not currently excluded or threatened with exclusion from participating in any federal or state funded health care program, including Medicare and Medicaid. Contractor agrees to notify the University of any imposed exclusions or sanctions covered by this representation.

    The University will regularly check the "List of Excluded Individuals/Entities" (LEIE), maintained by the Office of Inspector General, United States Department of Health and Human Services ("OIG") to determine if any Bidders/Respondents have been excluded from participation in federal health care programs, as that term is defined in 42 U.S.C. §1320a-7b(f). The University reserves the sole right to reject any respondents who are excluded by the OIG, who have been debarred by the federal government, or who have otherwise committed any act that could furnish a basis for such exclusion or debarment.

11. **Inventions, Patents, and Copyrights:** The Contractor shall pay for all royalties, license fees, patent or invention rights, or copyrights and defend all suits or claims for infringements of any patent or invention right or copyrights involved in the items furnished hereunder. The Contractor shall defend, protect, and hold harmless the University its officers, agents, servants and employees against all suits of law or in equity

resulting from patent and or copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

Copyrights for any item developed for the University shall be the property of the University and inure to its benefit and the Contractor shall execute such documents as the University may require for the perfection thereof.

12. **Insurance:** The Contractor shall purchase and maintain such insurance as will protect the Contractor and the University against any and all claims and demands arising from the execution of the contract. Further, when stated in the bid/proposal specifications, the Contractor shall be required to procure and maintain the types and limits of insurance as specified.

13. **Performance Bond/Irrevocable Letter of Credit:** If a performance bond or irrevocable letter of credit is required in the bid/proposal specifications, the Contractor shall furnish to the University, along with their signed contract, a performance bond or unconditional irrevocable letter of credit payable to the Curators of the University of Missouri in the face amount specified in the bid/proposal specifications as surety for faithful performance under the terms and conditions of the contract.

14. **Vendor Gifts:** The contractor shall refrain in offering any offers of gifts to the University, and all University of Missouri employee's, in accordance with University of Missouri Business Policy Vendor Gifts, section 3:110.

B. Instructions to Bidders/Respondents

1. **Request for Bid (RFB) / Proposal (RFP) Document:** Bidders/Respondents are expected to examine the complete RFB/RFP document and all attachments including drawings, specifications, and instructions. Failure to do so is at Bidder's/Respondent's risk. It is the Bidder's/Respondent's responsibility to ask questions, request changes or clarifications, or otherwise advise the University if any language, specifications or requirements of a RFB/RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB/RFP to a single source.

   Any and all communications from Bidder/Respondent regarding specifications, requirements, competitive process, etc., should be directed to the University buyer of record referenced in the RFB/RFP. It is the responsibility of the person or organization communicating the request to ensure that it is received. To guarantee a timely response, such communication should be received at least ten calendar days prior to the RFB/RFP opening date.

The RFB/RFP document and any attachments constitute the complete set of specifications and Request for Bid/Request for Proposal response forms. No verbal or written information that is obtained other than through the RFB/RFP or its addenda shall be binding on the University. No employee of the University is authorized to interpret any portion of the RFB/RFP or give information as to the requirements of the RFB/RFP in addition to that contained in or amended to the written RFB/RFP document. In case of any doubt or difference of opinion as to the true intent of the RFB/RFP, the decision of the University's Chief Procurement Officer shall be final and binding on all parties.

2. **Preparation of Request for Bids/Proposals:** All Request for Bids/Proposals must be submitted electronically via uBID.

   To receive consideration, Request for Bids/Proposals must be received electronically via uBID prior to the Bid/Proposal opening time and date stated in the RFB/RFP. It is the bidder's/respondent's full responsibility for the electronic submittal of Bids/Proposals by the due date and time.

   Unless otherwise specifically stated in the RFB/RFP, all specifications and requirements constitute minimum requirements. All Requests for Bids/Proposals must meet or exceed the stated specifications or requirements. All equipment and supplies offered must be new, of current production, and available for marketing by the manufacturer unless the RFB/RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered. Unless specifically stated and allowed in the bid/proposal specifications, all pricing submitted in response to this RFB/RFP is firm and fixed.

   Whenever the name of a manufacturer, trade name, brand name, or model and catalog numbers followed by the words "or equal" or "approved equal" are used in the specifications it is for the purpose of item identification and to establish standards of quality, style, and features. Bids/Proposals on equivalent items of the same quality are invited. However, to receive consideration, such equivalent bids/proposals must be accompanied by sufficient descriptive literature and/or specifications to clearly identify the item and provide for competitive evaluation. The University will be the sole judge of equality and suitability. Whenever the name of a manufacturer is mentioned in the specifications and the words "or equal" do not follow, it shall be deemed that the words "or equal" follow unless the context specifies "no substitution." Unless noted on the Request for Bid/Proposal, it will be deemed that the article furnished is that designated by the specifications. The University reserves the right to return, at contractor's expense, all items that are furnished which are not acceptable as equals to items specified and contractor agrees to replace such items with satisfactory items at the original proposal price.

   Time will be of the essence for any orders placed as a result of this RFB/RFP. The University reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the bidder's

Bid/respondent's Proposal and accepted by the University. Unless otherwise specified in the RFB/RFP specifications, all bids/proposals shall include all packing, handling, and shipping charges FOB destination, freight prepaid and allowed.

3. **Submission of Proposals:** Bidder/Respondent shall furnish information required by the solicitation in the form requested. The University reserves the right to reject bids/proposals with incomplete information or which are presented on a different form. Submission of the bid/proposal certifies that the Bidder/Respondent has read and fully understands all RFB/RFP specifications, plans, and terms and conditions.

   By submitting a bid/proposal, the Bidder/Respondent agrees to provide the specified equipment, supplies and/or services in the RFB/RFP, at the prices quoted, pursuant to all requirements and specifications contained therein. Furthermore, the Bidder/Respondent certifies that: (1) the bid/proposal is genuine and is not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, or corporation; (2) the Bidder/Respondent has not directly or indirectly induced or solicited any other Bidder/Respondent to submit a false or sham proposal; (3) the Bidder/Respondent has not solicited or induced any person, firm, or corporation to refrain from bidding/responding; (4) the Bidder/Respondent has not sought by collusion or otherwise to obtain any advantage over any other Bidder/Respondent or over the University.

   Bids/Proposals, once submitted, may be modified in the system prior to the exact date and time set for the RFB/RFP closing. Bids/Proposals may not be modified after the RFB/RFP closing time and date. Telephone and facsimile modifications are not permitted.

   Bids/Proposals may be withdrawn in writing, on company letterhead, signed by a duly authorized representative and received at the designated location of the buyer of record prior to the date and time set for RFB/RFP closing. Bids/Proposals may not be resubmitted after the scheduled closing time for the receipt of the bids/proposals.

   All bids/proposals, information, and materials received by the University in connection with an RFB/RFP response shall be deemed open records pursuant to 610.021 RSMo. If a Bidder/Respondent believes any of the information contained in the Bidder's bid/Respondent's response is exempt from 610.021 RSMo, the Bidder's bid/Respondent's response must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption; otherwise, the University will treat all materials received as open records. The University shall make the final determination as to what materials are or are not exempt

4. **Evaluation and Award:** Any clerical errors, apparent on its face, may be corrected by the Buyer before contract award. Upon discovering an apparent clerical error, the Buyer shall contact the Bidder/Respondent and request clarification of the intended bid/proposal.

The correction shall be incorporated in the notice of award. The University reserves the right to request clarification of any portion of the Bidder's bid/Respondent's response in order to verify the intent. The Bidder/Respondent is cautioned, however, that its bid/response may be subject to acceptance or rejection without further clarification.

The University reserves the right to make an award to the responsive and responsible Bidder/Respondent whose product or service meets the terms, conditions, and specifications of the RFB/RFP and whose proposal is considered to best serve the University's interest. In determining responsiveness and the responsibility of the Bidder/Respondent, the following shall be considered when applicable: the ability, capacity, and skill of the bidder/respondent to perform as required; whether the bidder/respondent can perform promptly, or within the time specified without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the bidder/respondent; the quality of past performance by the Bidder/Respondent; the previous and existing compliance by the Bidder/Respondent with related laws and regulations; the sufficiency of the Bidder's/Respondent's financial resources; the availability, quality and adaptability of the Bidder's/Respondent's equipment, supplies and/or services to the required use; the ability of the bidder/respondent to provide future maintenance, service and parts.

The University has established formal protest procedures. For more information about these procedures, contact the Buyer of Record.

In case of any doubt or difference of opinion as to the items and/or services to be furnished hereunder, the decision of the Chief Procurement Officer-UM System Supply Chain shall be final and binding upon all parties.

The University reserves the right to accept or reject any or all bids/proposals and to waive any technicality or informality.

5. **Contract Award and Assignment:** The successful Bidder(s)/Respondent(s) shall, within fifteen (15) days after the receipt of formal notice of award of the contract, enter into a contract prepared by the University. The Contract Documents shall include the Specifications and Addenda, Exhibits, Form of Contract, Letter of Award, University Purchase Order, and Form of Performance Bond, if required.

   The contract to be awarded and any amount to be paid thereunder shall not be transferred, sublet, or assigned without the prior approval of the University.

6. **Contract Termination for Cause:** In the event the Contractor violates any provisions of the contract, the University may serve written notice upon Contractor and Surety setting forth the violations and demanding compliance with the contract. Unless within ten (10) days after serving such notice, such violations shall cease and satisfactory arrangements for correction be made, the University may terminate the contract by serving written

notice upon the Contractor; but the liability of Contractor and Surety for such violation; and for any and all damages resulting there from, as well as from such termination, shall not be affected by any such termination.

7. **Contract Termination for Convenience:** The University reserves the right, in its best interest as determined by the University, to cancel the contract by given written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.

8. **Warranty and Acceptance:** The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished or adopted by the University, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of the University's acceptance of or payment for such equipment, supplies, and/or services.

   No equipment, supplies, and/or services received by the University pursuant to a contract shall be deemed accepted until the University has had a reasonable opportunity to inspect said equipment, supplies and/or services. All equipment, supplies, and/or services which do not comply with specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

9. **Payment:** Preferred settlement method is through the use of Electronic Accounts Payable solutions. Payment terms associated with these forms of payment will be issued as net 15 after the date of invoice. Payment terms associated with settlement by check will be considered to be net 30 days. Cash discounts for prompt payment may be offered but they will not be considered in determination of award unless specifically stated in the bid/proposal specifications. The University may withhold payment or make such deductions as may be necessary to protect the University from loss or damage on account of defective work, claims, damages, or to pay for repair or correction of equipment or supplies furnished hereunder. Payment may not be made until satisfactory delivery and acceptance by the University and receipt of correct invoice have occurred.

10. **Accounting Practices:** The Contractor shall maintain, during the term of the contract, all books of account, reports, and records in accordance with generally accepted accounting practices and standard for records directly related to this contract. The Contractor agrees to make available to the University, during normal business hours, all book of account, reports and records relating to this contract for the duration of the contract and retain them for a minimum period of one (1) year beyond the last day of the contract term.

11. **Debarment and Suspension Certification:** The contractor certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (2/18/86).

12. **Cooperative Purchasing:** The intended coverage of this RFB/RFP, and any Agreement resulting from this solicitation, shall be for the use by all faculty, staff, students, departments and affiliates of the University of Missouri, including University of Missouri Health Care. For more information, see http://www.umsystem.edu/ums/about/facts/.

    The University of Missouri System seeks to make the terms and prices of this contract available to other higher education institutions in the State of Missouri. Extension of the terms and prices to any or all other Missouri higher education institutions is at the discretion of bidders/respondents and shall not be considered in the award of this contract. The contractor shall further understand and agree that participation by other higher education institutions is discretionary on the part of these institutions, and the University of Missouri System bears no financial responsibility for any payments due the contractor by such entities, nor will the University be responsible for contract administration for other institutions.