



DEPARTMENT OF FINANCE
Procurement Services

Texas A&M Victoria Bid Terms & Conditions

ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF BID AND ANY SUBSEQUENT AWARD EXCEPTIONS MUST BE MADE IN WRITING

1. BIDDING REQUIREMENTS

- 1.1 Responding bidder (VENDOR) must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of Texas A&M-Victoria(A&M-Victoria).
- 1.2 Pricing must be quoted on a “per unit” basis, extended as indicated. Any trade discounts included must be itemized and deducted from extended prices. Unit Prices shall govern in the event of extension errors. VENDOR guarantees product or service offered will meet or exceed specifications included as part of this Invitation for Bid (IFB).
- 1.3 Bids should be submitted electronically via the Aggie Buy e-procurement platform, or as otherwise instructed. If allowed, mailed bids should be placed in separate envelope, complete and properly identified. Bids must be received by the A&M-Victoria Procurement Services on or before the time and date specified for the bid opening.
- 1.4 Bids sent via U.S. Postal Service, **must use the address indicated in the Invitation for Bid**. For delivery service or hand deliveries requiring a street address, 3007 N. Ben Wilson St. Victoria, TX 77901.
- 1.5 Late bids will not be considered under any circumstances.
- 1.6 Bids should be quoted “F.O.B. destination, freight prepaid and allowed” or “Delivered Duty Paid.” If quoting freight otherwise, show exact delivery cost and who bears cost if not included in unit price.
- 1.7 Bid prices are requested to be firm for a minimum of 60 days after bid opening date. “Discount from List” bids are not acceptable unless requested. Cash discounts will not be considered in determining the low bid. All cash discounts will be taken if earned.
- 1.8 As a VENDOR responding to this invitation for bid, upon submission of your response, regardless of the format of your submission, you and the entity you represent are agreeing to the Terms and Conditions of Bid (“Terms and Conditions”) presented herein.
- 1.9 Bid may not be altered or amended after opening time. Any alterations made before opening time must be initialed by VENDOR or an authorized agent of VENDOR. No bid may be withdrawn after opening time without approval by the A&M-Victoria Procurement Services.

1.10 Purchases made for use by A&M-Victoria are exempt from State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificate will be furnished by A&M-Victoria upon request.

1.11 A&M-Victoria reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid best to provide the best value and serve the interests of the State.

1.12 Preferences may be given to bids pursuant to Texas Government Code § 2155.441-452 (check any that are applicable):

- Products of persons with mental or physical disabilities
- Energy efficient products
- Rubberized asphalt paving material
- Texas and United States products and Texas services (Preference given to Texas vendor and Service-Disable Veteran)
- Recycled, remanufactured, or environmentally sensitive products
- Paper containing recycled fibers
- Recycled motor oil and lubricants
- Products and services from economically depressed or blighted areas
- Products produced at facilities located on formerly contaminated property
- Vendors that meet or exceed air quality standards
- Contractors providing goods of higher nutritional value

1.13 Inquiries pertaining to IFBs must include the IF number and opening date.

2. SPECIFICATIONS Any catalogue, brand name or manufacturer reference used in the Invitation for Bid is descriptive only, not restrictive, and is used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered unless otherwise specified. If bidding on other than reference, bid should show the manufacturer, brand or trade name, and other descriptions of the product offered. If other than brand(s) specified is offered, illustrations and complete descriptions of the product offered are requested to be made part of the bid. If VENDOR takes an exception to specifications or reference data in their bid, VENDOR will be required to furnish brand names, numbers, etc., as specified in the Invitation for Bid (IFB).

2.1 All items shall be new and unused, including containers suitable for shipment and storage, unless otherwise indicated in IFB. Oral agreements to the contrary will not be recognized.

2.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

VENDOR'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. 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 cost of the testing shall be borne by VENDOR. Goods which have been delivered and rejected in whole or in part may, at A&M-Victoria's option, be returned to the VENDOR or held for disposition at VENDOR's risk and expense. Latent defects may result in revocation of acceptance.

6. VENDOR 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 VENDOR shall be removed from all bid lists. By signature hereon affixed, the VENDOR hereby certifies that:

6.1 The VENDOR 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, service to a public servant in connection with the submitted bid.

6.2 Neither the VENDOR nor the firm, corporation, partnership or institution represented by the VENDOR, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, 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.

6.3 The VENDOR 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, from any acts or omissions of VENDOR or any agent, employee, subcontractor, or supplier of VENDOR in the execution or performance of this purchase order.

6.4 VENDOR certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of payments State agency. If section 669.003 applies, VENDOR will complete the following information for the bid to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with VENDOR: _____

Date of Employment with VENDOR: _____

6.5 The Contractor must comply with the applicable provisions of the Drug-Free Workplace Act of 1988.

7. CONFLICTING TERMS & CONDITIONS Any terms and conditions attached to a bid will not be considered unless the VENDOR specifically refers to them on the front of this bid form. WARNING: SUCH TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF THE BID. (E.G. BIDS WITH THE LAWS OF A STATE OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC. AWARD OF CONTRACT. A response to an IFB is an offer to contract with A&M-Victoria based upon the

terms, conditions and specifications contained in the IFB. Bids do not become contracts until they are accepted, and an authorized purchase order is issued.

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9. PAYMENT All invoices shall be itemized, showing order number and agency purchase order number. A&M-Victoria will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.

10. PATENTS OR COPYRIGHTS The VENDOR agrees to protect A&M-Victoria from claims involving infringement of patents or copyrights.

11. VENDOR ASSIGNMENTS VENDOR hereby assigns to purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

12. EXPORT CONTROL VENDOR agrees to comply with all applicable US Export Control laws and regulations to include the Export Administration Regulations (EAR), the International Traffic in Arms (ITAR) and any other applicable US export laws and regulations. As an institution of higher learning, A&M-Victoria typically does not take receipt of export-controlled goods, technical data, services or technology ("Materials") except as may be specifically agreed by A&M-Victoria. VENDOR agrees that it will not provide or make accessible to A&M-Victoria any export-controlled Materials without first informing A&M-Victoria of the export-controlled nature to the Materials and obtaining from A&M-Victoria its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to A&M-Victoria. VENDOR agrees to obtain government approval or export license if required from the appropriate US Government agency and to share that information with A&M-Victoria prior to delivery of such Materials. If any purchased item is export controlled under the U.S. Export Control Regulations, VENDOR shall provide A&M-Victoria with the export control classification and failure to do so may result in the cancellation of the respective purchase order or agreement.

13. SUSTAINABILITY A&M-Victoria is committed to campus sustainability initiatives. Support of these initiatives necessarily includes the purchase of goods and services that minimize the impact on the environment to the greatest extent possible. A&M-Victoria requests VENDOR's assistance in campus sustainability initiatives by informing in any bid response, or other discussions, of VENDOR's sustainability practices or environmentally sustainable product offerings. For example, alternative products available from VENDOR which may be recyclable or reusable, end of life (obsolescence) return of equipment to VENDOR, energy-saving devices, return to VENDOR of shipping containers, packaging or like excess materials.

14. STATE CONTRACTING VENDOR agrees to the following state contracting requirements All references to "Agreement" shall also mean the Terms and Conditions herein and any Purchase Order issued which

includes reference to the Terms and Conditions. A&M-Victoria and VENDOR may be individually referred to as "Party" or collectively referred to as "Parties."

14.1 Compliance with Laws. Each Party hereto shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.

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

14.3 State Auditor's Office. VENDOR 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. VENDOR agrees to cooperate with the Auditor in the conduct of the audit or investigation, including, without limitation, providing all records requested. VENDOR will include this provision in all contracts with permitted subcontractors.

14.4 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, VENDOR agrees that any payments owing to VENDOR under this Agreement may be applied directly toward certain debts or delinquencies that VENDOR 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.

14.5 Loss of Funding. Performance by A&M-Victoria 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, A&M-Victoria will issue written notice to VENDOR and A&M-Victoria may terminate this Agreement without further duty or obligation hereunder. VENDOR acknowledges that appropriation of funds is beyond the control of A&M-Victoria. In the event of a termination or cancellation under this Section, A&M-Victoria will not be liable to VENDOR for any damages that are caused or associated with such termination or cancellation.

14.6 Public Information. VENDOR acknowledges that A&M-Victoria 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 A&M-Victoria's written request, and at no cost to A&M-Victoria, VENDOR will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M-Victoria in a non- proprietary format acceptable to A&M-Victoria that is accessible by the public. VENDOR acknowledges that A&M-Victoria 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 VENDOR agrees that this Agreement can be terminated if VENDOR knowingly or intentionally fails to comply with the requirement of that subchapter.

14.7 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 A&M-Victoria and VENDOR to attempt

to resolve any claim for breach of contract made by VENDOR that cannot be resolved in the ordinary course of business. VENDOR shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of A&M-Victoria, who shall examine.

VENDOR's claim and any counterclaim and negotiate with VENDOR in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M-Victoria's sovereign immunity to suit or liability, and A&M-Victoria has not waived its right to seek redress in the courts.

14.8 Access to Agency Data. If applicable, Pursuant to Section 2054.138, Texas Government Code, VENDOR shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://it.tamu.edu/policy/it-policy/controls-catalog/index.php>, as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of A&M-Victoria's data. VENDOR shall periodically provide A&M-Victoria with evidence of its compliance with Security Controls within thirty (30) days of A&M-Victoria's request.

14.9 Data Privacy. VENDOR shall hold A&M-Victoria's data in confidence. VENDOR shall only use or disclose A&M-Victoria's data for the purpose of fulfilling VENDOR's obligations under this Agreement, as required by law, or as otherwise authorized in writing by A&M-Victoria. VENDOR shall restrict disclosure of A&M-Victoria's data solely to those employees, subcontractors or agents of VENDOR that have a need to access the A&M-Victoria's data in order for VENDOR to perform its obligations under this Agreement. VENDOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on VENDOR in this Agreement.

VENDOR shall, within two (2) business days of discovery, report to A&M-Victoria any use or disclosure of A&M-Victoria's data not authorized by this Agreement or in writing by A&M-Victoria. A&M-Victoria's designated contact for breaches shall be Help Desk Central (helpdesk@tamuv.edu; (361) 570-4399). Help Desk Central can be contacted during business hours of 8:00 am – 5:00 pm CST. Security breach investigation reports shall be provided to the designated contact for A&M-Victoria and A&M-Victoria's Chief Information Security Officer (cybersecurity@tamuv.edu).

VENDOR's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the A&M-Victoria data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what VENDOR has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action VENDOR has taken or will take to prevent future similar unauthorized use or disclosure. VENDOR shall provide such other information, including a written report, as reasonably requested by A&M-Victoria. VENDOR must promptly notify A&M-Victoria of any legal request for A&M-Victoria's data from a third party and take (and assist A&M-Victoria in taking) appropriate steps not to disclose such A&M-Victoria data.

Within thirty (30) days of the expiration or termination of this Agreement, VENDOR, as directed by A&M-Victoria, shall return all A&M-Victoria data to A&M-Victoria in its possession (or in the possession of any of its subcontractors or agents) or delete all such A&M-Victoria data if return is not feasible. VENDOR shall

provide A&M-Victoria with at least ten (10) days' written notice of VENDOR's intent to delete such A&M-Victoria data and shall confirm such deletion in writing.

14.10 FERPA. If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), A&M-Victoria hereby designates VENDOR as a school official with a legitimate educational interest in any education records (as defined in FERPA) that VENDOR is required to create, access, receive, or maintain in order to fulfill its obligations under this Agreement. VENDOR shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or A&M-Victoria in writing. VENDOR is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees' subcontractors or agents who have a need to access the education records for such purpose. VENDOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on VENDOR in this Section, including without limitation, the prohibition on redisclosure.

14.11 Payment Card Industry (PCI) Compliance. If applicable, for purposes of this Agreement, "PCI DSS" means the most current version of the Payment Card Industry Data Security standard administered by the Payment Card Industry Security Standards Council. VENDOR acknowledges and agrees that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of A&M-Victoria, or to the extent that VENDOR could impact the security of the cardholder data environment.

VENDOR represents and warrants that, as of the Effective Date of this Agreement, it has complied with all PCI DSS requirements and has performed the necessary steps to validate its compliance with PCI DSS. VENDOR shall maintain such compliance for the Term of this Agreement and send documentation of its most recent validation of compliance to A&M-Victoria annually during the Term of this Agreement. If VENDOR learns that it is no longer PCI DSS compliant, VENDOR will notify A&M-Victoria within two (2) business days of discovery and immediately remediate such non-compliance.

VENDOR acknowledges that unauthorized access to the cardholder data environment (a "cardholder data breach") resulting from a lapse in VENDOR's security obligations is grounds for early termination of this Agreement, without penalty and with immediate effect, at A&M-Victoria's discretion. VENDOR agrees to comply with all laws, rules, and regulations applicable to cardholder data services, including without limitation, those laws requiring notification of individuals in the event of a cardholder data breach.

VENDOR agrees to indemnify and hold harmless A&M-Victoria from and against any third-party claims, damages, or other harm related to a cardholder data breach. This provision survives termination of this Agreement.

14.12 Cybersecurity Training Program. If applicable, Pursuant to Section 2054.5192, Texas Government Code, VENDOR's employees, officers, and subcontractors who have access to A&M-Victoria's computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected by A&M-Victoria. The cybersecurity training program must be completed by VENDOR's employees, officers, and subcontractors during the Term and any renewal period

of this Agreement. VENDOR shall verify completion of the program in writing to A&M-Victoria within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. VENDOR acknowledges and agrees that its failure to comply with the requirements of this paragraph are grounds for A&M-Victoria to terminate this Agreement for cause.

14.13 Access by Individuals with Disabilities. If applicable, VENDOR represents and warrants that the electronic and

information resources and all associated information, documentation, and support that it provides to A&M-Victoria under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206 of the

Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code) (the “EIR Accessibility Warranty”). VENDOR shall provide A&M-Victoria with a Voluntary Product Accessibility Template (“VPAT”) or similarly formatted document attesting to the accessible

features and capabilities of the EIRs. A&M-Victoria may test the EIR to ensure the accuracy of the VPAT response regarding conformance with the EIR Accessibility Warranty. If VENDOR becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, VENDOR shall, at no cost to A&M-Victoria, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that VENDOR fails or is unable to do so, A&M-Victoria may immediately terminate this Agreement, and VENDOR will refund to A&M-Victoria all amounts paid by A&M-Victoria under this Agreement within thirty (30) days following the effective date of termination.

14.14 Cloud Computing Services. If applicable, VENDOR certifies that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources (“TX-RAMP”). Pursuant to Section 2054.0593, Texas Government Code, VENDOR shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. VENDOR shall provide A&M-Victoria with evidence of its TX-RAMP compliance and certification within thirty (30) days of A&M-Victoria’s request and at least thirty (30) days prior to the start of any renewal term of this Agreement. If VENDOR fails to maintain TX-RAMP compliance and certification throughout the Term, including any Renewal Term, A&M-Victoria may immediately terminate this Agreement, and VENDOR will provide a refund to A&M-Victoria of any prepaid fees.

14.15 Vendor Access. If applicable, VENDOR hereby acknowledges responsibility to comply with all applicable A&M-Victoria policies, rules, standards, practices, and agreements, including but not limited to safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by A&M-Victoria.

For purposes of this section concerning Vendor Access, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records);

intellectual property (as set forth in Section 51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by A&M-Victoria to be essential to the continued performance of the mission of A&M-Victoria, the unavailability of which would result in consequences to A&M-Victoria.

In the event VENDOR should obtain or be granted access to Confidential and/or Mission Critical Information of A&M-Victoria (“A&M-Victoria Information”), VENDOR will keep and protect A&M-Victoria Information confidential to no less than the same degree of care as required by A&M-Victoria policies, rules and procedures. At the expiration or early termination of this Agreement, VENDOR agrees to return all A&M-Victoria Information or agrees to provide adequate certification that the A&M-Victoria Information has been destroyed. VENDOR, its employees, agents, contractors, and subcontractors shall use the A&M-Victoria Information solely in connection with performance by VENDOR of the services provided to A&M-Victoria pursuant to this Agreement, and for no other purpose. Should VENDOR, its employees, agents, contractors, or subcontractors acquire other A&M-Victoria Information during the course of this Agreement, it shall not be used for VENDOR’s own purposes or divulged to third parties. VENDOR shall comply with all terms and conditions of any A&M-Victoria non-disclosure agreement applicable to this Agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this Agreement and the eligibility for VENDOR to receive any A&M-Victoria Information from A&M-Victoria for a period of not less than five (5) years.

Both Parties shall each provide contact information for specific individuals. Should the designated contract for either Party needs to be changed, the new contact information shall be updated and provided to the respective Parties within 24 hours of any staff changes. Should VENDOR have a need to access A&M-Victoria’s designated contact. Further, VENDOR is responsible for reporting all security breaches directly to A&M-Victoria. A&M-Victoria’s designated contact for breaches shall be Help Desk Central (helpdesk@tamuv.edu; (361) 570-4399). Help Desk Central can be contacted during business hours of 8:00 am – 5:00 pm CTS. Security breach investigation reports shall be provided to the designated contact for A&M-Victoria and A&M-Victoria’s Chief Information Security Officer (cybersecurity@tamuv.edu).

14.16 Buy Texas. VENDOR agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, VENDOR will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

14.17 HUB Subcontracting Plan. It is the policy of the State of Texas and A&M-Victoria to encourage the use of Historically Underutilized Businesses (“HUB”) in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M-Victoria contracting and purchasing. When applicable, VENDOR will use good faith efforts to subcontract work performed under this Agreement in accordance with a A&M-Victoria HUB subcontracting plan (“HSP”). Except as specifically provided in the HSP, VENDOR will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, VENDOR will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

14.18 Insurance. VENDOR shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth in the solicitation document.

14.19 Prohibited Agreements. VENDOR recognizes that as a state agency, A&M-Victoria may not award contracts as outlined below.

a. Compensation for Preparing Bids. A&M-Victoria cannot award a contract if such contract includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Under Section 2155.004, Texas Government Code, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

b. Disaster Related Contracts. A&M-Victoria cannot award a contract if such contract involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

c. Involvement in Human Trafficking. A&M-Victoria cannot award a contract if such contract includes financial participation by a person, who, during the five-year period preceding the date of the contract, has been convicted of any offense related to the direct support or promotion of human trafficking. Under Section 2155.0061, Texas Government Code, VENDOR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.20 Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, VENDOR certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.21 Certification Regarding Boycotting Israel. To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, VENDOR certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. VENDOR acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.22 Certification Regarding Business with Certain Countries and Organizations. To the extent that Subchapter F, Chapter 2252, Texas Government Code, is applicable to this Agreement, VENDOR certifies

that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. VENDOR acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.23 Certification as to Discrimination Against Firearm Entities. To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, VENDOR verifies that (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. VENDOR acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

14.24 Certification as to Boycotting Energy Companies. To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, VENDOR verifies that (a) it does not boycott energy companies, and (b) it will not boycott energy companies during the term of this Agreement. VENDOR acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

14.25 Franchise Tax Certification. If VENDOR is a taxable entity

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

14.26 Prior Employment. VENDOR acknowledges that Section 2252.901, Texas Government Code, prohibits A&M-Victoria 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 A&M-Victoria during the twelve (12) month period immediately prior to the effective date of the Agreement. If VENDOR is an individual,

by signing this Agreement, VENDOR represents and warrants that it is not a former or retired employee of A&M-Victoria that was employed by A&M-Victoria during the twelve (12) month period immediately prior to the effective date of the Agreement.

14.27 Conflict of Interest. VENDOR certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, or any officer of A&M-Victoria or the A&M System, has a direct or indirect financial interest in VENDOR or in the transaction that is the subject of this Agreement.

14.28 Not Eligible for Rehire. VENDOR is responsible for ensuring that its employees involved in any work being performed for A&M-Victoria 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 A&M-Victoria becomes aware that VENDOR has a NEFR Employee involved in any work being performed under this Agreement, A&M-Victoria 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 A&M-Victoria.

14.29 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.

14.30 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 VENDOR's service to A&M-Victoria. As an independent contractor, VENDOR 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, VENDOR (and its representatives, agents, employees, and subcontractors) will not represent themselves to be an agent or representative of A&M-Victoria or the A&M System.

14.31 Non-assignment. VENDOR shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M-Victoria.

14.32 Representations & Warranties. If VENDOR is a business entity, VENDOR 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 deliver this Agreement, and the individual executing this Agreement on behalf of VENDOR has been duly authorized to act for and bind VENDOR.

14.33 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).

14.34 Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, 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.

14.35 Venue. Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against A&M-Victoria, is to be in the county in which the principal office of A&M-Victoria's governing officer is located.

14.36 Limitations. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of A&M-Victoria to enter into certain terms and conditions of this Agreement, including, but

not limited to, those terms and conditions relating to liens on A&M-Victoria'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 A&M-Victoria except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by A&M-Victoria nor any other conduct, action, or inaction of any representative of A&M-Victoria relating to this Agreement constitutes or is intended to constitute a waiver of A&M-Victoria's or the state's sovereign immunity.

14.37 **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.

14.38 **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.

14.39 **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.