

POLICY TITLE: MUR-003: GENERAL CONDITIONS

The following general conditions shall become a part of each Invitation for Bid and Contract issued by the University and/or the Procurement Services herein after referred to as the University.

01. Every person submitting a bid to the University shall be deemed to have assented to these conditions by the act of bidding.
02. These general conditions will not be repeated in each Invitation for Bid, although they shall be an integral part of each invitation and resulting contract. Upon request, a copy of these General Conditions may be provided with each application to be placed on the University's Official Bid List. Revisions of General Conditions may be sent to all vendors who have applied and have been accepted for inclusion on the University's Official Bidders List and thereafter form a integral part of each bid and contract.
03. Additional conditions may be incorporated in specific invitations and contracts and are usually termed "Special Conditions." Such special conditions will in no way operate to alter or nullify the general conditions and each bidder shall be responsible for compliance with both the general and special conditions. However, in case of irreconcilable conflict, the special conditions shall govern.

I. BID SUBMISSION COMPLIANCE AND PROVISIONS: In submitting bids on any item to be purchased by the University, the bidder hereby agrees to:

- a. Submit each bid or quotation in legible form on the "Invitation for Bid" or "Request for Quotation" form respectively.
- b. Have the bid signed by a proper agent of the firm prior to the bid opening. No bid will be considered valid unless filled out in ink or typewritten and signed in ink in the space provided on the bid form.
- c. Specify brand name or trademark and model and catalog number for each item bid.
- d. Offer only one price for each item bid and offer only one product for each item of the invitation, unless

the invitation specifically states that more than one product can be bid on for a single item of the contract. Offering more than one product for any item of the invitation is multiple bidding and will automatically disqualify the entire bid except when multiple bids are expressly invited by the Invitation for Bid.

- e. Extend prices for items where applicable and provide an extended total and a grand total where appropriate, it being understood that in cases of an error in an extension of prices the unit price will govern.
- f. Quote prices on a delivered prepaid basis F.O.B. destination shown in the shipping instructions of the invitation, unless otherwise stated in the invitation. Do not quote "F.O.B. Factory-Freight Allowed" or other such terms.
- g. Provide technical specifications together with any other data needed to evaluate properly those brands of products offered as equal to those specified in the invitation prior to the date the bid is to be opened and to state clearly, on the bid proposal or in an attached letter, any deviations of the brand offered from the brand specified.
- h. Refrain from including Federal Excise Taxes in the bid, since the University is exempt from such taxes.
- i. Provide new and current commodities (latest models) unless otherwise specified in the invitation.
- j. Provide firm prices unless otherwise stated in the invitation.
- k. Submit bids in such a way as to ensure that they arrive in Procurement Services before the time set for opening the bid or quotation; the time shown on the recording clock on the receptionist's desk in the Procurement Services being agreed upon as the correct time. To be considered for an award of contract a late bid must be postmarked before the bid opening date and must be the only responsive bid received. Hand-delivered bids cannot be considered unless they are delivered before the bid opening time and date.
- l. Maintain as a firm offer any and all bids with respect to price, terms and conditions after they are opened, it being understood that after opening, bids may be withdrawn prior to an award only where evidence is presented to the Director of the Procurement Services which clearly demonstrates that

the bidder has made a bona fide error in the preparation of the bid and that the error will result in a substantial loss to the bidder if he is forced to perform under the contract. Prior to opening, a bid may be withdrawn at the vendor's request.

- m. Accept any contracts awarded on the price, terms and conditions stated in the bid.
- n. Submit a bid bond or check as specified, if called for, in the Special Instructions of the invitation, it being understood that any bid may be rejected for failure to comply with instructions or specifications regarding both bonds or checks.
- o. Comply with the General Bid Instructions and with all requests regarding the submission of samples and to pay all shipping costs for samples either sent to or returned from the University. The bidder agrees that title to any sample rests in the University, if within 30 days after award the bidder does not request return.
- p. To make available records, papers, books, or other documents, whether during performance or in connection with a preliminary investigation of bidder's financial status. Such information shall be limited to the information generally available to the public, provided it satisfactorily indicated the bidder's ability to perform as specified under the contract. If the initial investigation does not reasonably satisfy the University that the contract can be performed, the University may request additional information before a contract is awarded. The bidder further agrees, if so requested, to furnish the University a list of names of several users of the bidder's products. The bidder also agrees to make available to the University, for a period of five years after acceptance of equipment, both spare parts and maintenance service, at current user prices, in the event of equipment malfunction requiring said service or spare parts.
- q. File a performance bond pursuant to a request from the University whether or not such a bond was required by the Invitation for Bid. The bidder will sign the bond as principal and in addition will have the bond signed by a surety company authorized to do business in the Commonwealth of Kentucky, it being understood that if the surety has its authority to do business in Kentucky revoked or withdraws from doing business in the Commonwealth, the bidder who meets the requirements of this condition will promptly obtain another surety on the bond. All bonds

furnished under this condition shall be conditioned upon the full performance of all obligations imposed on the bidder by his contract with the University and shall provide for recovery by the University of any and all damages suffered by it by reason of the bidder's failure to perform any of his contract obligations, said recovery being permissible from the bidder and the surety or either of them.

- r. Obtain a bond meeting the requirements of the Invitation for Bid from the bidder's source of supply when requested to do so by the University. If such a bond is required, it shall be made in favor of the University and shall be conditioned on the source of supply making available to the bidder such equipment or products as will enable him to fulfill his obligations under his contract with the University.
- s. The required bonds shall be submitted in a form approved by the University.
- t. Refrain from assigning any interest, right or duty in any contract with the University to any other person without the prior written consent of the University; provided, however, that claims for sums due or to become due under a contract may be assigned to a bank, trust company or other person and may then be reassigned. Notice of any such assignment must be given by the vendor or his assignee to the University, Procurement Services, immediately after the assignment is made; and the invoice-voucher submitted by the vendor must clearly show both his name and address and his assignee's name and address. The payment issued will be payable in such case jointly to the vendor and the assignee and will be forwarded to the assignee. Any such assignee shall be subject to the set-off rights of the Commonwealth provided in Kentucky Revised Statutes. See KRS 371.040 and KRS 44.030.
- u. Self-addressed return envelopes may be included with each Invitation for Bid. The use of this envelope and the proper designation as to the invitation number and opening time will prevent the bid being opened before the time scheduled to open. It will also permit greater efficiency in handling bids.
- v. Any time the University is closed on days other than scheduled Holidays, bid openings scheduled for that day will be held on the next normal working day at the scheduled hour.

Any time opening hours of the University are delayed, bid openings may, at the option of the University be

delayed by the same amount of time. (Offices open two hours late; bids may be opened two hour late.)

II. COMPLIANCE WITH STATE AND FEDERAL LAW:

The bidder further agrees that in addition to any other remedies at law or equity the University may cancel any contract where there is sufficient evidence to show that:

- a. The contract was obtained by fraud, collusion, conspiracy or other unlawful means.
- b. The contract conflicts with any statutory or Constitutional provision of the Commonwealth of Kentucky or of the United States.

III. COMPENSABLE DAMAGES FOR BREACH:

The bidder agrees that the following items shall be included as compensable damages to the University for any breach of a contract with the University.

- a. Replacement costs.
- b. The cost of repeating the competitive bidding procedures.
- c. Expenses incurred as the result of delay in obtaining replacements.

The enumeration of compensable damages contained in this section is not intended to be exclusive and will not operate to bar recovery by the University for any other damages occasioned by the vendor's breach of a contract. However, in cases where the contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated.

IV. DELIVERY, TRANSPORTATION AND PACKAGING:

The bidder covenants that, if awarded a contract, he will:

- a. Make deliveries as stated in the contract, it being understood that all deliveries must be made by the end of the University's fiscal year in which the contract is awarded unless otherwise specified in a specific contract.
- b. Make deliveries during normal working days and hours to the point or points specified in the

Invitation for Bid (normal working hours being 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays).

- c. Pay all transportation charges to the delivery point FOB as specified in the Contract. If Contract specifies transportation to be paid by the University, vendor will prepay shipping charges and add those charges to the invoice.
- d. Adequately pack all commodities and equipment, according to accepted commercial practice and the packaging and marketing instructions in the contract document. No charges will be made for packing cases, bailing, crating, barrels, drums, bags or other containers, except that if the bid so specifies, the vendor may make a memorandum charge and require the University either to return the containers for credit (with transportation costs paid by the vendor) or pay for said containers if not returned in a reasonable length of time.

V. CONTRACT PROVISIONS BY REFERENCE:

It is mutually agreed by and between the University and the bidder that the University's acceptance of the bidder's offer by the issuance of a contract shall create a contract between the parties thereto containing the following:

- a. All specifications, terms and conditions in the Invitation for Bid and the Bid Form; except as amended in the contract.
- b. The provisions of the awarded contract to include all terms, special conditions and specifications.
- c. The General Conditions stated herein.
- d. It is mutually agreed by and between the University and the bidder that any contract agreement entered into with the University shall be governed by the laws of the Commonwealth of Kentucky.
- e. It is agreed further that no contract shall be binding on the University until an encumbrance of funds has been made in the University for the payment of the sums due under the provisions of the contract.

VI. CONTRACT CHANGES: The University may at any time by a written order and without notice to the sureties, make changes within the general scope of the

contract. If any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this clause must be asserted, by the contractor, within 30 days from the date of receipt of the notification of changes; provided, however, that the University decides that the facts justify such action, the University may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property may be obsolete or excess as a result of a change included in the contractor's claim for adjustment, the University shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment may be disputed concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

VII. CONTRACT DISPUTES:

Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Director of Procurement Services or a designated procurement official, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the purchasing official shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the University a written appeal addressed to the appropriate Vice President. The decision of the Vice President or his duly authorized representative for the determination of such appeals shall be final and conclusive unless fraudulent. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with performance of the contract and in accordance with the Vice President's decision.

VIII. EQUAL EMPLOYMENT COMPLIANCE:

During the performance of each contract, the contractor/vendor agrees:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, or national origin.
- b. The contractor will take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, handicap, or national origin; however, when layoffs occur, employees shall be laid off according to seniority with the youngest employee being laid off first. When employees are recalled, this shall be done in the reverse of the way the employees were laid off.
- c. The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, or national origin.
- d. The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section.
- e. The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

IX. REPORTING COMPLIANCE OR BREACH:

Upon being declared the successful bidder, the contractor/vendor may be required to submit in a manner as prescribed by the University and on forms devised and supplied by the University a breakdown of the bidding party's existing workforce, indicating the race, sex, age, position held, county and state of residence, and date of employment of each employee.

Additionally, a statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data as required by KRS 45.550 to 45.640.

If a determination is made that the bidding party's workforce information shows compliance with the law, it shall be certified and thereby qualified to bid on any contract covered by KRS 45.550 to 45.640 without filing additional data for a six month period. Should the workforce information show an under utilization of minorities, the bidding party will be required to submit an affirmative action plan indicating goals and timetables for recruiting and hiring minorities in the contractors' workforce.

X. FAILURE TO COMPLY:

Failure to comply with any provisions of KRS 45.550 to 45.640 shall constitute a material breach of contract.

XI. ADDITIONAL EQUAL EMPLOYMENT PROVISIONS UNDER CONTRACTS UTILIZING FEDERAL FUNDS:

The contractor will comply with all provisions of Presidential Executive Order 11246 (41 CFR, Part 60-1.4) as amended.

XII. TERMINATION OF CONTRACTS:

a. Termination for Default.

1. Any contractor who is determined in writing by the procurement official to be in breach of any of the terms and conditions of a contract with the University held by such contractor, shall, in the discretion of the procurement official, be declared in default and such contract may be terminated as a result of such default.
2. A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications; failure to make delivery within the time specified or according to a delivery schedule fixed by the contract; late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency; failure to diligently prosecute the work under a contract for construction services.

3. The University shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default as determined by the purchasing official except for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date. The contractor, and/or his surety, if a performance or payment bond had been required under the contract, shall be jointly and severally liable to the University for all loss, cost or damage sustained by the University as a result of the contractor's default; provided, however, that a contractor's surety liability shall not exceed the final sum specified in the contractor's bond.

b. Termination for Convenience

The University shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the procurement official has determined that such termination will be in the University's best interests. When it has been determined that a contract should be terminated for the convenience of the University, the procurement agency shall be authorized to negotiate a settlement with the contractor according to terms deemed just and equitable by the procurement agency. Compensation to a contractor for lost profits on a contract terminated for convenience of the University shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bore to the contract price, based on the total out of pocket expense incurred by the contractor as of the date of termination of the contract. Whenever a contract is terminated for the convenience of the University, the contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the University shall be made from the same

source of funds or account as the original contract.

XIII. COMPLIANCE WITH FEDERAL REQUIREMENTS:

When a procurement involves the expenditure of federal assistance or contract grant funds, the awarded contractor shall comply with such federal law and authorized regulations which are applicable and which are not presently set forth elsewhere in this solicitation. Reference: Office of Management and Budget Circular A-102, Appendix "O".

XIV. TERMS FOR PROMPT PAYMENT:

KRS 45.451 to 45.458 requires that all bills shall be paid within 30 working days of both the receipt of correct invoice, and receipt of goods or services in satisfactory condition. A penalty payment of 1% per month may be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer cash discounts for payments made in less than the prescribed 30 days.