

TERMS AND CONDITIONS

The following terms and conditions apply to all contracts or purchase agreements made with the William Paterson University of NJ (University) unless specifically deleted in the University's proposal form. Vendors submitting offer to the University must cross out any paragraph they do not agree to meet. Any cross out or change in the University's Terms and Conditions will be a factor in the determination of an award of a contract or purchase agreement.

Bidders are notified by this statement that all Terms and Conditions will become a part of any contract(s) or order(s) awarded as a result of the request for proposal, whether stated in part, in summary or by reference. In the event a vendor's terms and conditions conflict with the University's, the University terms and conditions shall prevail.

1.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS.

1.1 CORPORATE AUTHORITY - It is required that all corporations be authorized to do business in the State of New Jersey. Corporations incorporated out of the State must file a Certificate of Authority with the Secretary of State, Department of State, State House, Trenton, NJ. Refer to N.J.S.A. Title 14A Chapter 13-3.

1.2 Business Registration of Public Contractors - (P. L. 2004, C57)

All business organizations that do business with a local contracting agency are required to be registered with the State and provide proof of that registration to William Paterson University before the contracting agency may enter into a contract with. William Paterson University is a state University.

1.3 Public Law 2005, Chapter 51(formerly Executive Order 134)

All business organizations that do business with a local contracting agency are required to complete and return the certification documents as established under this Executive Order. No contract may be awarded until the Department of Treasury approves the request for certification.

1.4 Executive Order 129 - Outsourcing

All business organizations that do business with a William Paterson University are required to comply with this Executive Order. A contract cannot be awarded to a vendor that submits a bid proposal to perform services, or have a subcontractor perform services, pursuant to the contract at a site outside the United States.

1.5 ANTI-DISCRIMINATION - All parties to any contract with William Paterson University agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through 10:2-4 N.J.S.A. 10:5-31 through 10:5-38 and all rules and regulations issued thereunder.

1.6 PREVAILING WAGE ACT - The New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150, is hereby made a part of every contract entered into on behalf of William Paterson University except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner of the Department of Labor and Industry as one who has failed to pay prevailing wages in accordance with the provisions of this Act.

1.7 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT (P.L. 1963, c. 315, N.J.S.A. 34:5A-1 et. seq.) requires employers to label all containers of hazardous substances by March 29, 1985. By August 29, 1986, employers must label all containers on their premises. Proper compliance shall be deemed a term and condition of any University purchasing contract.

1.8 OWNERSHIP DISCLOSURE - Contracts for any work, goods, or services cannot be issued to any firm unless prior to or at the time of bid submission the firm has disclosed the names and addresses of all its owners holding 10% or more of the firm's stock or interest. Refer to N.J.P.L. 1977 chapter 33.

1.9 COMPLIANCE - STATE LAWS This agreement shall be governed by the laws of the State of New Jersey. Any and all actions relating to the provisions of this Agreement shall be brought in the courts of New Jersey. New Jersey law shall apply to all issues in this Agreement regardless of any principles of conflict of law policies, statutes or case law. This Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. This Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

1.1.0 COMPLIANCE - LAWS - The vendor must comply with all local, State of New Jersey and federal laws, rules and regulations applicable to this contract and to the work to be done hereunder.

2.0 LIABILITIES

2.1 LIABILITY - COPYRIGHT - The contractor shall hold and save the University, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or

appliance furnished or used in the performance of his contract.

2.2 INDEMNIFICATION - The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the University, the State of New Jersey, and employees of both from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, resulting from the performance of the Project or through the negligence of the Contractor or through any improper or defective machinery, implements or appliances used by the Contractor in the project, or through any act or omission on the part of the Contractor or his agents, employees or servants, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this agreement.

2.3 INSURANCE - The successful bidder shall secure and maintain in force for the term of the contract liability insurance as provided herein. The successful bidder shall provide the University with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty days written notice to the University. The insurance to be provided by the successful bidder shall be as follows:

1. Comprehensive General Liability policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and products liability (completed operations). Limits of liability shall not be less than \$1,000,-000.00 per occurrence for property damage liability.

2. Comprehensive General Automobile Liability policy covering owned, non-owned, and hired vehicles with minimum limits of \$1,000,000.00 combined single limits.
3. Worker's Compensation Insurance applicable to laws of the State of New Jersey and Employers' Liability insurance with a limit of not less than \$1,000,000.00. Upon request, the successful contractor will provide certificates of insurance to the University prior to the Start of the contract and periodically during the course of a multi-year contract.

3.0 TERMS GOVERNING ALL PROPOSALS TO WILLIAM PATERSON University (Unless Otherwise Specified in Bid Specifications)

3.1 CONTRACT AMOUNT - The estimated amount of the contract(s), as stated in Advertised Bid Proposal Form shall not be construed as either the maximum or the minimum amount which the University shall be obligated to order as the result of this proposal or any contract entered into as a result of this proposal.

3.2 CONTRACT PERIOD AND EXTENSION OPTION - If it is in the best interest of the University to extend any contracts entered into as a result of this proposal for a period of all or any part of a year, the contractor will be so notified of the University's intent at least 30 days prior to termination of the existing contract. If the extension is acceptable to the contractor, at the original prices and on the original terms, notice will be given the contractor by the University in writing. In such cases a new Performance Bond must be submitted by the contractor on a pro rata basis of the original Performance Bond to cover the period of the extension unless otherwise specified. (Where required)

3.3 VENDORS RIGHT TO PROTEST - INTENT TO AWARD - Except in the case of emergencies, bidders have the right to protest the award of a contract. Only bypassed responsible bidders will be notified by certified mail that their

bids were not accepted. Bidders will then have a 10 working day period from the date of the notice to file a written protest with the University. The University may eliminate the right to protest when it deems it is in the public interest to do so. N.J.S.A., Chapter 64, Title 18A.

3.4 TERMINATION OF CONTRACT

a. Change of Circumstances:

Where circumstances and/or the needs of the University significantly change or the contract is otherwise deemed no longer to be in the public interest, the University may terminate a contract entered into as a result of the bid, upon no less than 5 days notice to the vendor.

b. For Cause:

Where a vendor fails to perform or comply with a contract, the University may terminate the contract upon 5 days notice to the vendor with an opportunity to cure.

Where a vendor continues to perform a contract poorly as performance or service, short-shipping, etc. the University may terminate the contract upon 5 days notice to the vendor with an opportunity to respond. In cases of emergency, the University may shorten the time period of notification and may dispense with opportunity to respond.

Pursuant to N.J.S.A. 40A:11-15, all multi-year leases and contracts shall be subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation.

3.5 COMPLAINTS - Where a vendor has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause, as per **3.4** a vendor may be bypassed for this award unless the vendor submits with the bid (A) an explanation of why these past performances occurred, and (B) the steps the vendor has taken which will provide an acceptable cure.

3.6 SUBCONTRACTING OR ASSIGNMENT - The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the Director or

his/her designee of Purchasing. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

In the event that the bidder proposes to subcontract for the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an itemization of the services to be supplied by them.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the University.

3.7 PERFORMANCE GUARANTEE OF BIDDER -The bidder hereby certifies that: The equipment offered is standard new equipment, and is the manufacturer's latest model in production with parts regularly used for the type of equipment offered, that such parts are all in production and not likely to be discontinued: also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

All equipment supplied to the University and operated by electrical current is UL approved.

All new machines are to be guaranteed for a period of one year from time of delivery and/or installation and prompt service rendered without charge, regardless of geographic location.

Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.

Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within 48-hour period or within the time accepted as industry practice.

The contractor shall immediately replace any material which is rejected for failure to meet the requirements of the using agency.

All services rendered to the University shall be performed in strict and full accordance with the specifications as agreed to in the contract. A service contract shall not be considered complete until a final approval by the University is rendered. Payment to vendors for services

rendered may not be made until final University approval is given.

3.8 DELIVERY GUARANTEES - Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in proposal.

The vendor shall be responsible for the delivery of material in first class condition to the University or the purchaser under this contract and in accordance with good commercial practice.

3.8.1 Items delivered must be strictly in accordance with bid specifications.

3.8.2 In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the specifications, the University may obtain the material or service from any other available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.

3.8.3 Vendors are authorized to ship only those items and quantities indicated that are covered by the contract. If a review of material received indicates that material other than that covered by the contract has been ordered and delivered, the Director or his/her designee of Purchasing will take such steps as are necessary to have the material returned regardless of the time lapsed between the date of delivery and discovery of the violation.

Full credit will be demanded. Compliance with this requirement is the full responsibility of the vendor. Violation of this clause may result in the removal of the offending vendor's name from the mailing list for a period of up to three years.

3.8.4 Bidders shall acquaint themselves with conditions to be found at the site and shall assume all responsibility for placing and installing the equipment in the locations required. All freight or other delivery charges shall be pre-paid by the vendor.

3.8.5 The University will accept deliveries during normal business hours 9 a.m. to 4 p.m. on

normal business days (Monday through Friday). (Except 12 noon to 1:00 p.m.)

3.8.6 All items must be delivered into and placed at a point within the buildings as directed by the University. Notification must be given 24 hours in advance on any single item that weighs over 500 pounds by calling our Receiving Clerk at 973-720-2156.

3.8.7 Unloading and the placing of any supplies or equipment at any specified site in this bid is the sole responsibility of the successful bidder with notification given to their assigned trucker for implementation of this requirement at no additional cost to the University.

NOTE: ANY EXCESS QUANTITY SHIPPED OTHER THAN THAT SPECIFIED AND AWARDED WILL BE RETURNED TO THE VENDOR ON A C.O.D. BASIS.

3.9 UNIVERSITY'S RIGHT OF FINAL BID ACCEPTANCE - The University reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the best interest of the University to do so. In case of tie bids, the University shall have the authority to award orders or contracts to the bidder or bidders best meeting all specifications and conditions.

3.10 BID ACCEPTANCES AND REJECTIONS - Pursuant N.J.A.C. Title 17, Chapter 12, Subchapter 2.4 through 2.5 the terms and conditions defined therein relating to informalities in bidding and automatic rejections of bids shall apply to all proposals and bids.

3.11 UNIVERSITY'S RIGHT TO INSPECT BIDDER'S FACILITIES - The University reserves the right to inspect the bidder's establishment before making an award.

3.12 MAINTENANCE OF RECORDS - The contractor shall maintain record for products and/or services delivered against the contract for a period of three (3) years from the date of final

payment. Such records shall be made available to the University upon request.

4.1 PRICE FLUCTUATIONS DURING CONTRACT - All prices quoted shall be firm and not subject to increase during the period of the contract.

In the event of a manufacturer's price decrease during the contract period, the University shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The University must be notified in writing of any price reduction within five (5) days of the effective date.

4.2 DELIVERY COSTS - Unless noted otherwise in the specifications, all prices for items in bid proposals are to be submitted F.O.B Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the vendors shall assume all liability and responsibility for the delivery of the merchandise in good condition to the University or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the University unless otherwise specified. No additional charges will be allowed for any transportation costs resulting from partial shipments made at vendor's convenience when a single shipment is ordered. The weights and measure of the University receiving the shipment shall govern.

4.3 C.O.D. TERMS - Unless otherwise stated in the RFP, C.O.D. terms are not acceptable as part of a bid proposal, and are cause for automatic rejection of a bid.

The University reserves the right to deduct from the vendor's invoice submitted for payment, all charges incurred in the event any items are shipped and delivered on a "Collect" basis via common carrier in lieu of the specified F.O.B. delivered terms as indicated in this bid award.

4.4 TAX CHARGES - The University is exempt from all New Jersey sales, use and local taxes under N.J.S.A. 54:32B-9A. As a non-profit institution the University is exempt from Federal Excise Tax. These taxes must not be included in vendor quotations or invoices.

4.5 PAYMENT TO VENDORS - Payments for goods and/or services purchased by the University will only be made against the vendor's invoice and the University certification of receipt of goods or service.

The University agrees to pay the **CONTRACTOR** in current funds for the performance of the contract subject to additions and deductions, said payment to be made within 60 days after such supplies or equipment have been delivered, inspected and found in compliance with the agreement. *Payments for partial deliveries will only be made upon completion of at least 90% of the total order to occur within a 60-day period from the time of the bid award and/or acknowledgment by the supplier. The University will reserve the right to either accept the remaining items as an open order or cancel them after this 60-day period depending on the need for these items and their availability from the latest delivery information forwarded by the supplier.

*Unless indicated otherwise.

5.0 CASH DISCOUNTS - Cash discounts for periods of less than fifteen (15) days will not be considered as factors in the award of contracts for purposes of determining the compliance of any discount offered.

1. A discount period shall commence on the day the University receives a properly executed vendor's invoice for products and services that have been duly accepted by the University in accordance with the terms, conditions and specifications on the Contract/Purchase Order. If the invoice is received prior to delivery of the goods and services, the discount period begins with the acceptance of the goods or services.

2. The date on the check issued by the University in payment of that invoice shall be deemed the date of the University response to that invoice.

6.0 TIME FOR CONTRACT AWARD - The Award of the Contract or the rejection of the bid(s) shall be made within 60 days of the date of receiving bids. Bidders and its surety agree that the time for acceptance of its bid shall be automatically extended for an additional 30-day period for the making of the award, unless bidder and its surety notify the University in writing by certified mail, not more than 10 days or less than 5 days from a date 30 days after the receipt of bids, that bidder and its surety do not agree to said 30-day automatic extension. In the event of said automatic extension, the University shall make the award or reject such bids on or before 90 days from the date of receiving bids.

7.0 ASSIGNMENTS - The contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without written consent of the University. In case the contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the contractor shall be subject to prior liens of all persons, firms and corporations for services rendered or materials supplied under this contract.

8.0 OBLIGATION OF BIDDER - At the time of the opening of bids, each bidder will be presumed to be thoroughly familiar with the specifications, supply and equipment lists and contract documents, including all addenda, and, if applicable, to have inspected the site. The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation with respect to his bid.

If any item is withdrawn by the successful lowest bidder **after award** by the Board of Trustees and has to be purchased from the next lowest bidder,

the Director or his/her designee of Purchasing of the University reserves the right to charge any additional difference paid to the original bidder for his cancellation in the form of a deduction from his invoice for other items purchased or as a separate billing.

9.0 PROHIBITED INTERESTS - No official of the University who is authorized in such capacity and on the behalf of the University to negotiate, make, accept or approve, or to take part in negotiating, making accepting, or approving any material or supply contract or any subcontract in connection with the furnishing of supplies, services, and/or equipment, shall become directly or indirectly interested personally in this contract or in any part hereof.

10.0 AGENDA AND INTERPRETATION - Should the bidder find discrepancies or omissions in the specifications, he shall at once notify the University which will send written instructions to all bidders. No oral interpretation of the specifications or other contract documents will be given to any bidder. Every request for such interpretation shall be addressed in writing to the University; and to be given consideration, it should be received at least five (5) days prior to the date set for the opening of the bids. All such interpretations and supplemental instructions will be in the form of written addenda to the specifications and drawings and become a part of the contract documents. Failure to receive any such addenda shall not relieve any bidder from any obligation under his bid as submitted. In the event of a dispute as to the true meaning of these instructions or the specifications, the interpretations of the Board of Trustees of the University shall be final and binding.

11.0 MANUFACTURERS TRADE NAME AND CATALOG REFERENCES - The Trustees of William Paterson University will consider products of manufacturers which are equal in quality to the items on the equipment list and in all ways meet the specifications, and O.S.H.A. requirements.

When a catalog reference follows the description of an item, such catalog reference is intended as a means of more fully describing the item in the shortest possible space and is to be regarded as part of the description of the item. The use of catalog references is not intended to limit competition. These catalog numbers have been adopted from their respective sources for purposes of identification and to establish minimum requirements for quality and design.

All manufacturers' names, brand names, and catalog numbers contained herein are intended to designate type, size materials, finish, and quality only. The bid may be based on equipment by other manufacturers having similar design, equal quality, and/or equivalent. However, if another brand is submitted, it must be accompanied with documentation by an independent testing lab certifying that it meets the equivalency of those specifications contained in this bid, if applicable. Decision of the University as to quality, conformance to any enclosed specifications shall be final. Any enclosed specifications with this bid are to be used as a reference by those vendors who can offer the University another brand who does meet at least the minimum standards indication or who can furnish evidence that his product or service are equivalent in size, configuration, testing, or operation in its intended use. Bidders shall designate manufacturer's name and catalog number on which his bid is based where these differ from those designated. **Where brand names are not indicated, supplier must specify brand names**

In any instance, where the proposed supply or equipment differs from the items on the equipment list contained in these specifications, such differences must be explained by way of detailed specifications and descriptions submitted as part of the bid.

Failure to change descriptions as above indicated will be interpreted to mean that the bidder intends to furnish the particular make of article specified, and the University will insist upon delivery of the specified item. Substitutions will not be permitted after bids have been opened.

The decision of the University as to whether an alternate or substitution is in fact "equal" shall be final.

12.0 SAMPLES - The University reserves the right to request a representative sample of the item quoted upon prior to the award.

Samples, when required, must be submitted in accordance with instructions, otherwise bids may not be considered.

When samples are requested subsequent to bid opening, they shall be delivered within 10 days of the request, or as directed.

Samples shall be delivered free of charge and shall be removed by the bidder at his expense.

The University will not be responsible for any samples damaged or destroyed by examination.

13.0 SUBSTITUTIONS - Substitutions shall not be allowed by William Paterson University except in cases in which it is impossible for the contractor to provide the required services or materials which were offered in the bid. The bidder will be required to furnish written proof of his revised costs for the service or material to the Director or his/her designee of Purchasing. If the substitutions are lower in cost than the original specified materials or services, the difference in value between the original specified materials or services and the substituted services or materials shall be a credit to William Paterson University and shall be deducted from the contract price. If the substitutions are greater in cost than the original specified materials or services, such added cost shall be borne by the successful bidder.

Notwithstanding the foregoing, William Paterson University reserves the right to pursue all lawful remedies in the event that a vendor fails to provide the materials or services that it has offered in its bid.

14.0 BID SECURITY (If applicable) - As a guaranty, each bid must be accompanied by a deposit of a certified check, cashier's check or bid bond acceptable to William Paterson University, and payable to William Paterson University, Wayne, NJ, in the sum of ten (10) percent of the

total amount of the bid, not in excess of \$20,000. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any contracting unit, which condition requires the depositing of a guaranty in an amount other than ten (10) percent of the bid or in excess of \$20,000, the provisions stated herein shall not apply and the requirement of the law or regulation of the United States shall govern. (N.J.S.A. 40A:11-21).

The bid security, except the security of the three lowest responsible bidders, shall be returned within ten (10) days after the opening of bids, Sundays and holidays excluded, after the awarding and signing of the contract and the approval of the contractor's performance bond, the bid security of the remaining unsuccessful bidders shall be returned to them. (N.J.S.A. 40a:11-24)

15.0 LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT -

The successful bidder, upon failure or refusal to execute and deliver the contract and signed acknowledgment copy of Purchase Order required or Performance Bond when requested within ten (10) days after he has received notice of the acceptance of his bid, shall forfeit to the owner, as liquidated damages for such failure or refusal the bid security deposited with his bid.

16.0 DEFAULT OF CONTRACTOR - (If applicable) If the University shall declare the said Contract in Default in whole or in any part, such declaration of default shall in no way relieve or effect the liability of the Contractor and his surety for breach of any of the covenants and conditions of said contract.

If the work or services to be done hereunder is either incomplete, neglected or delayed, unsatisfactory, abandoned by the contractor or otherwise in violation of the provisions of the contract, or if this Contract shall be assigned or the work or services sublet by him otherwise than as specified in the contract, or if at any time or for any reason the University declares the Contractor in default, the University may notify the Contractor to discontinue all work or services or

any part thereof or may notify the Contractor to remedy or correct the conditions or any part thereof or may notify the Contractor to remedy or correct the conditions or breaches enumerated by a written notice served upon the Contractor at its last known address. In the event that the work or services is ordered discontinued as herein provided or in case the said conditions or breaches are not remedied and corrected to the satisfaction of the University within three (3) days from the service of said written notice, the University will thereupon have power to have the work or services completed by the surety or to contract for the completion of the work or services or such parts thereof, in the manner prescribed by law or to employ such persons as it may deem advisable to complete the work or services or to complete the work or services itself and to charge to the expenses so incurred and any resulting damages to the Contractor. Without limitation of its remedies and reserving the right to maintain an action to recover damages arising from any default, the

University may deduct the expense incurred there from the payments due or to become due and the Contractor shall be liable for any deficiencies.

17.0 SUMMARY - Candidates must be cognizant that William Paterson University is a public, tax supported institution in the State of New Jersey, and the County of Passaic. As such, William Paterson University has the desire, the requirement, and the responsibility to adhere to all the applicable statutes, policies, practices, and individual judgments which protect or advance the interests of the Citizenry, Bidders, therefore, must agree, if applicable, to execute and provide all affidavits, agreements, certificates, statements, authorizations, and other assurances or documents of Compliance which William Paterson University may require in such cases as Affirmative Action, Non-Collusion, Manufacturer's Certificate, Ability to Perform Certificates, Stock Disclosure, and various other forms required by law and the Board of Trustees.