

# Request for Proposal

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**ISSUE DATE:** May 5, 2017

**RFP #** 10054411

**TITLE:** College of Medicine Student Malpractice Insurance

**CONTACT:** Michelle Newman  
Purchasing Department  
The University of Tennessee  
Health Science Center  
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Memphis, TN 38163

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**Proposals will be received until:** May 19, 2017 at 2:30CT

## Confidential Information

All documents and correspondence, including any proprietary or confidential materials contained in the proposal, will be subject to the Tennessee Public Records Act, TCA 10-7-503.

All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the Proposers will become the property of the University when received.

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## **SECTION 1 - GENERAL**

### **1.1 University Information**

The University of Tennessee is a land-grant, higher-education institution. The University is an instrumentality of the State of Tennessee. The UT system includes UT Knoxville, UT Health Science Center in Memphis, UT Chattanooga, UT Martin, UT Space Institute in Tullahoma, and the statewide UT Institute of Agriculture and UT Institute for Public Service.

The system is governed by a 26-member Board of Trustees appointed by the governor of Tennessee. About 45,000 students are enrolled system-wide, and more than 9,000 graduate each year. With over 12,000 faculty and staff, The University of Tennessee System has a presence in each of Tennessee's 95 counties. The UT System was founded in 1794 and became a statewide university system in 1968.

### **1.2 Contract Period**

UTHSC seeks vendors to provide Student Medical Malpractice Insurance beginning July 1, 2017 until June 30, 2022.

### **1.3 Extension of Contract Terms to Other Institutions**

To promote efficiency in procurement, the University encourages its suppliers to extend the terms and conditions of awards (including pricing, delivery, and rebates) to other State of Tennessee agencies and the Tennessee Board of Regents. Proposers must indicate whether Proposer is willing to extend the terms and conditions of an award to such entities. If extending the terms and conditions of an award to other State of Tennessee entities would affect Proposer's ability to offer the most favorable incentives, pricing, and terms to The University of Tennessee, Proposer must mark "no" in Proposer's response.

## **SECTION 2 -SCOPE & OBJECTIVES**

### **2.1 Scope**

The College of Medicine at the University of Tennessee Health Science Center, seeks a vendor to provide Student Medical Malpractice Insurance.

### **2.2 Project Description**

Individual medical professional liability coverage for University of Tennessee Health Science Center Medical Students who are also entitled to assert absolute immunity from liability for acts or omissions in accordance with and pursuant to T.C.A. 9-8-307 (h). The policy will be a slot policy to cover the medical students as described below. Coverage is subject to approval by the Tennessee Board of Claims pursuant to T.C.A. § 9-8-108(a)(4).

**Named Insured:**

Each student enrolled in the University of Tennessee Health Science Center for medical incidents arising out of professional services rendered as a student within the scope of the student's education and training and that are performed while under the direction of UTHSC faculty and/or residents.

**Limits of Liability:**

The limits of liability will apply separately to each student insured under the policy. The limits of liability for 1<sup>st</sup> and 2<sup>nd</sup> year students will be \$200,000 per occurrence/\$600,000 annual aggregate. The limits of liability for 3<sup>rd</sup> and 4<sup>th</sup> year students will be \$1,000,000 per occurrence/\$3,000,000 annual aggregate. For any one medical incident, one limit of liability shall apply to each student regardless of the number of claims or suits brought on account of such medical incident.

**Coverage:**

Claims made during policy period with tail coverage (a reporting endorsement) will be required for any slots that are closed and not filled in the future and if the entire policy is cancelled or non-renewed.

**Other Provisions:**

Policy may provide that, for any claim made, insured will assert absolute immunity from liability pursuant to the provisions of T.C.A. § 9-8-307(h) and 20-13-102 and that insured will not waive immunity, except with the express consent of the insurer.

**Policy Period:**

One year commencing July 1, 2017 (12:01 a.m. Standard Time). Renewable on an annual basis for a maximum of 5 years.

**Financial Security:**

A.M. Best rating of "A" or comparable.

**Insurer:**

Licensed and admitted in Tennessee.

### **Actual Enrollment for 2016/2017**

	No. of Students
M1	173
M2	165
M3	165
M4	161

### **Projected Enrollment for 2017/2018**

	No. of Students
M1	173
M2	172
M3	168
M4	165

## **SECTION 3 – ADMINISTRATIVE INFORMATION**

### **3.1 Issuing Office**

The University of Tennessee  
Health Science Center  
Purchasing Department  
847 Monroe, Suite 205  
Johnson Bldg.  
Memphis, TN 38163

Purchasing Contact: Michelle Newman  
Phone: 901-448-7271  
Fax: 901-448-8028  
Email: [knewma13@uthsc.edu](mailto:knewma13@uthsc.edu)

**NOTE 1: The University is not responsible for late, lost, or misdirected bids, regardless of the cause.**

**NOTE 2: Regarding this RFP: during the RFP process (from the date that the University issues this RFP through the date that the University issues a binding award), all communication must be directed only to staff members in the**

**University's Purchasing department. The University may disqualify any Proposer's RFP if the Proposer communicates with any University employee outside of the Purchasing department.**

### **3.2 Schedule of Events**

Release of RFP	May 5, 2017
Last date for questions regarding RFP	May 10, 2017
Proposal Deadline & Time	May 19, 2017 at 2:30 pm

### **3.3 Questions and Revisions**

Proposers may ask *written* questions by mail or e-mail before the question deadline concerning this RFP. The University will not respond to questions submitted after the deadline. The University will respond to all questions via email. Oral communications are not binding on the University.

The University will publish responses to Proposers' inquiries as an addendum to the RFP. Proposer is responsible for reading addenda.

The University may modify this RFP at any time before the Proposal deadline by issuing written addenda.

All addenda will be numbered consecutively and will be part of this RFP.

### **3.4 State of Tennessee Employees**

Proposer may not bid if Proposer:

- a) is employed by the State of Tennessee;
- b) has retired from or terminated such employment within the past six months; or
- c) will be employed by the State of Tennessee during the term of any contract with the University.

### **3.5 Conflict of Interest**

Proposers must disclose any conflicts of interest in Proposer's Proposal. Proposer must disclose the following conflicts of interest:

- a) If Proposer's outside interests might compromise Proposer's judgment and objectivity with respect to Proposer's responsibilities to the University.
- b) Proposer's outside interests that might affect Proposer's ability to provide goods or services to the University.
- c) Proposer's business partners or employees who are also employed by the University.
- d) Whether Proposer, or any of Proposer's employees, are related to University employees.  
"Related" includes marriage or domestic partnership.

### **3.6 Proposal Preparation Costs**

Proposer is responsible for all costs that Proposer incurs by responding to this RFP, including travel expenses.

### **3.7 Non-Collusion; Compliance with Law**

Under penalty of perjury, Proposer certifies that its Proposal has not been arrived at collusively or otherwise in violation of Federal or Tennessee antitrust laws. Proposer states that it complies with all applicable laws.

### **3.8 Governing Law**

The laws of the State of Tennessee, excluding conflict of law principles, govern this RFP.

### **3.9 Withdrawal of Proposals**

Withdrawal: Proposers may withdraw their Proposal at any time before the deadline for responses. To withdraw a Proposal, a Proposer must submit a written request signed by a representative authorized to legally bind the Proposer. Proposer must send withdrawal requests to the Purchasing contact listed above.

Resubmit: Proposers may resubmit a Proposal at any time before the deadline for responses.

### **3.10 Late Proposals**

The University will not accept Proposals after the deadline.

## **SECTION 4 – GENERAL INFORMATION**

The University prefers that its purchase order contain all terms and conditions governing an award. The University is an instrumentality of the State of Tennessee and, as such, has sovereign immunity. If Proposer will require the University to sign a contract provided by Proposer, then Proposer must provide a copy of the proposed contract with its Proposal. The University of Tennessee is a state-created public institution of higher education.

As an instrumentality of the State of Tennessee, the University has sovereign immunity under Article I, Section 17 of the Tennessee Constitution and the Eleventh Amendment to the Constitution of the United States. Only the Tennessee General Assembly has authority to waive sovereign immunity; no officials at the University have this authority. Additionally, the University has limited contracting authority and can agree only to contract terms that are consistent with Tennessee law.

## **SECTION 5 – PROPOSAL SUBMISSION**

1. Required Submissions: Each Proposer must submit one (1) signed hard copy and one (1) electronic response for technical and financial proposals in separate sealed envelopes.

- 1) Technical Proposal
- 2) Financial Proposal

2. **General Information**: The University will not evaluate the financial proposal until all technical proposals have been evaluated and scored. The scoring committee will not have access to the cost proposals during the technical evaluation.

## **SECTION 6 – TECHNICAL RESPONSE**

### **6.1 Directions**

- a) **No Pricing**: Proposers must not include any cost/pricing information in the Technical Proposal.
- b) **Complete Responses**: If a Proposer submits an incomplete response, the University may reject the Proposal.
- c) **Form**: Proposers must respond to each requirement in the same order listed below.

### **6.2 Cover Letter**

Proposer must submit a cover letter with its Proposal. The cover letter must be signed by a representative who is legally authorized to bind the Proposer. The cover letter must be in the format of a standard business letter, and it must include the following:

- A statement referencing all addenda to this RFP issued by the University and received by the Proposer. If no addenda have been received, a statement to that effect should be included.
- A statement that the proposal is valid for 6 months after the Proposal submission deadline.
- A statement that the Proposer will accept financial responsibility for all travel expenses incurred for in-person presentations (if required).
- A statement that summarizes any deviations or exceptions to the RFP requirements and includes a detailed justification for the deviation or exception.

### **6.3 Proposer Qualifications/Experience**

Please give a brief history of your company and detail your company's qualifications and duration of experience. Please include the following information:

- A brief description of the firm, including ownership.
- Brief qualification and biography of the specific personnel to be assigned to the audit. Describe experience levels of each such individuals, including the number of years of related experience and how long they have been with the firm.
- Address of office that would be providing service under this agreement
- Number of years in business
- State of incorporation

- Number of employees
- Please detail past and present higher education experience
- Please detail any special resources, skills, or services that your firm would provide to the University of Tennessee
- Detail your ability and expertise to perform services in a highly professional and timely manner

## 6.4 References

Please provide at least 3 references for which the same services are currently being utilized, and briefly describe the type of service provided.

Include, at a minimum, the following information:

- Company/School/Business name
- Contact name
- Phone number
- E-mail address
- Brief description of the scope of the business relationship and value
- Current status of business relationship

## 6.5 Technical Requirements

Technical Proposal must be submitted in a separate sealed envelope from the cost proposal. Vendor must submit one (1) hard copy and one (1) electronic copy of their technical proposal.

1. A statement listing any deviations from the Description of Professional Liability Insurance Coverage for UTHSC College of Medicine Students.
2. A specimen copy of the policy that you propose to meet the University's requirements. All riders, endorsements, options, exclusions, etc. must be included.
3. Documentation that the insurer is licensed and admitted in Tennessee.
4. Evidence of the insurance carrier's most recent ratings from A.M. Best and other major rating agencies.
5. A statement explaining any exclusions, restrictions, or limitations on coverage. Reference should be made back to the applicable sections of the specimen policy relating to any such exclusions, restrictions, or limitations on coverage.

6. The name, office address, phone number and statement of the qualifications, licenses, and relevant experience of the servicing agent(s) that you propose to service this account if you receive an award from the University.
7. If the proposal is being submitted by an agent or broker, a letter of authorization from the proposed insurance carrier that the agent or broker is authorized by the carrier to submit a response to this Request for Technical Proposal.
8. Indicate whether your company can write tail coverage for the current policies if the University leaves the incumbent carrier that provides this coverage or if tail coverage must be secured from the incumbent carrier.
9. Indicate the ordinary policy period for this type of coverage written by your company (one year, etc.).
10. State all information that you would require from the University in order to provide a binding quotation for this coverage. Include a copy of any application forms required to render a quotation.
11. Additional Information - Anything the proposer deems essential to understanding the proposer's proposal or qualifications for which no provision is made in the specifications or proposal requirements should be included in this section of the proposal.

## 6.6 Technical Requirement Evaluation Criteria

<b>Section</b>	<b>Description</b>
1	A statement listing any deviations from the Description of Professional Liability Insurance Coverage for UTHSC College of Medicine Students
2	Sample Policy
3	Tennessee License
4	Evidence of the insurance carrier's most recent ratings from A.M. Best and other major rating agencies
5	A statement explaining any exclusions, restrictions, or limitations on coverage. Reference should be made back to the applicable sections of the specimen policy relating to any such exclusions, restrictions, or limitations on coverage
6	The name, office address, phone number and statement of the qualifications, licenses, and relevant experience of the servicing

<b>Section</b>	<b>Description</b>
	agent(s) that you propose to service this account if you receive an award from the University
7	If the proposal is being submitted by an agent or broker, a letter of authorization from the proposed insurance carrier that the agent or broker is authorized by the carrier to submit a response to this Request for Technical Proposal
8	Indicate whether your company can write tail coverage for the current policies if the University leaves the incumbent carrier that provides this coverage or if tail coverage must be secured from the incumbent carrier.
9	Indicate the ordinary policy period for this type of coverage written by your company (one year, etc.)
10	State all information that you would require from the University in order to provide a binding quotation for this coverage. Include a copy of any application forms required to render a quotation
11	Additional Information - Anything the proposer deems essential to understanding the proposer's proposal or qualifications for which no provision is made in the specifications or proposal requirements should be included in this section of the proposal
<b>Total Number of Technical Points Possible</b>	

## **SECTION 7 – FINANCIAL PROPOSAL**

The Proposer must submit a financial proposal separate from its technical proposal.

7.1.1 Financial proposal must be submitted as follows: one (1) hard copy and one (1) electronic copy.

## **SECTION 8 - Proposer Presentations**

As a part of the evaluation process, Proposers scoring the highest technical scores may be requested to present their proposal to the University's evaluation committee. The University reserves the right to select the number of highest ranking Proposers to present. All Proposers may not be invited to this presentation process. Any information gained during the presentation may be used in the evaluation of the proposal. Failure to honor this request may be grounds for rejection of the proposal, with no further consideration given to the proposal. The University is under no obligation or requirement to request proposer presentations.

## **SECTION 9 - FINANCIAL PROPOSAL**

The financial proposal should be in a separate sealed envelope marked "Financial Proposal." Please utilize Schedule 4 –Pricing Proposal Form to submit premiums.

## SECTION 10 – BASIS FOR AWARD

The evaluation process is designed to award an agreement not necessarily to the proposer of least cost, but rather to the proposer with the best combination of attributes based upon the evaluation criteria. All qualified proposals will be evaluated and scored on a weighted-point method by a committee consisting of representatives for The University of Tennessee.

All proposals will be scored relative to other proposals with regards to prices submitted and to requirements and specification criteria listed in the RFP document. If the University makes an award, the University will award to the Proposer whose proposal scores the highest total points.

### 10.1 Scoring Schedule

Scoring	Max Points
Technical Points	700
Financial Proposal	300
Total Point	1000

### 10.2 Financial Proposal Scoring

Cost proposal points will be based on the information provided by the proposers in their financial proposal response of the RFP. The maximum points possible for the financial proposal are 300 points.

The proposal with the lowest price gets the total maximum points. The subsequent financial scores are based on the following formula: *Financial Score= ((Lowest price amount from all proposals)/(other proposal price being evaluated)) x maximum number of points*

## Schedule 1 - Terms and Conditions Guidelines

1. Generally: The information below is meant to make the procurement process more efficient for both the University and Proposers. Proposers who will require the University to sign a contract that Proposer provides must comply with this Schedule.
  - a. Right to Reject: The University reserves the right to reject any bid, regardless of dollar amount, if the bidder fails to comply with these guidelines.
  - b. Not Comprehensive: This Schedule is not comprehensive, and there are other legal or business issues to which the University cannot agree because of state law or university policies. The University may negotiate all terms and conditions.
  - c. Copy: Proposer must provide an editable and unlocked Word version of Proposer's contract with the Proposal.

2. **Revisions:** Proposer must be willing to revise its terms and conditions to comply with Tennessee laws, regulations, and University policies. The University may reject a Proposal if the Proposer will not revise its terms and conditions as requested by the University.
3. **Prohibited Clauses:** The University will not agree to any of the following clauses:
  - a. Governing law other than the State of Tennessee;
  - b. Venue/Jurisdiction/Forum Selection in any location;
  - c. Acceleration clauses;
  - d. Clauses requiring the University to indemnify, defend, and/or hold harmless the successful Proposer;
  - e. Clauses requiring the University to accept responsibility to settle lawsuits or other claims against the Proposer;
  - f. Clauses requiring the University to pay the Proposer's attorney's fees, court costs, costs of collection, or costs of audit;
  - g. Clauses requiring the University to submit to alternative dispute resolution, including arbitration or mediation;
  - h. Clauses creating third party beneficiaries or granting third parties rights under the contract;
  - i. Clauses limiting the time during which the University could file suit against the vendor;
  - j. Clauses requiring the University to purchase insurance other than shipping/transit insurance;
  - k. Clauses requiring the University to pay late fees. Note: clauses requiring the University to pay the interest allowed under the Tennessee Prompt Pay Act, currently 1.5%, on late payment are acceptable;
  - l. Clauses requiring the University to accept responsibility for the acts or omissions of anyone other than University employees.
  - m. Clauses incorporating click-wrap, shrink-wrap, or browse-wrap terms and conditions;
  - n. Clauses allowing the Proposer to seek an injunction or other equitable relief against the University; and
  - o. Clauses requiring a University official to provide a personal guarantee.

**Note: Adding a phrase such as “To the extent allowed by law” or “Unless prohibited by law” before any of the above-referenced clauses will not make the clause acceptable to the University.**

4. **Authorized Signatures:**
  - a. Purchase orders: The University's Purchasing staff members have authority to sign purchase orders on behalf of the University.
  - b. All other documents: For all other legally binding documents only the specifically named individuals on the following link have authority to bind the University: <http://treasurer.tennessee.edu/contracts/contractsignature.html>. Documents signed by other University employees are void.

## Schedule 2 – Technical Form

**TECHNICAL  
FORM OF PROPOSAL  
RFP 10054411**

In response to Request for Proposal (RFP) 10054411, the undersigned presents this Technical Proposal to provide College of Medicine Student Malpractice Insurance to the University of Tennessee Health Science Center in accordance with the RFP documents contained herein. The proposer agrees to be bound by all terms and conditions of the RFP and to enter into a contract for the proposed services if selected as the successful bidding during the bidding phase.  
Inclusion of Price Proposal dollar amounts in the Technical Proposal shall make the entire Proposal non-responsive.

---

Firm Name

---

Signature

---

Street Address

---

Typed Name

---

City/State/Zip Code

---

Title

---

Phone No.

---

Date

---

Fax No.

---

Federal ID Number

---

Email Address

NOTE: ONE (1) ORIGINAL HARDCOPY AND ONE (1) ELECTRONIC COPY OF THE COMPLETE TECHNICAL PROPOSAL, UNDER SEAL, SHOULD BE SUBMITTED.

## Schedule 3 – Financial Form

**FINANCIAL  
FORM OF PROPOSAL  
RFP 10054411**

In response to Request for Proposal (RFP) 10054411, the undersigned presents this Financial Proposal to provide College of Medicine Student Malpractice Insurance to the University of Tennessee Health Science Center in accordance with the RFP documents contained herein. The proposer agrees to be bound by all terms and conditions of the RFP and to enter into a contract for the proposed services if selected as the successful bidding during the bidding phase

---

Firm Name

---

Signature

---

Street Address

---

Typed Name

---

City/State/Zip Code

---

Title

---

Phone No.

---

Date

---

Fax No.

---

Federal ID Number

---

Email Address

NOTE: ONE (1) HARDCOPY ORIGINAL AND ONE (1) ELECTRONIC COPY OF THE COMPLETE FINANCIAL PROPOSAL, UNDER SEAL, SHOULD BE SUBMITTED.

## Schedule 4 – Pricing Proposal Form

TOTAL PROPOSED PREMIUMS  
COLLEGE OF MEDICINE STUDENT MALPRACTICE INSURANCE  
UNIVERSITY OF TENNESSEE HEALTH SCIENCE CENTER  
RFP 10054411

### PROPOSED PREMIUMS

#### MONTHLY PREMIUMS PER STUDENT

Monthly Premium per Medical Student – 1 <sup>st</sup> and 2 <sup>nd</sup> year student	
Monthly Premium per Medical Student – 3 <sup>rd</sup> and 4 <sup>th</sup> year student	

## Schedule 5 – Addendum No. 1 issued from Original Proposal

RFP 10054411  
College of Medicine Malpractice Insurance  
Addendum #1

The following questions have been received by UTHSC for the above RFP.

1. Please provide copies of the current policy and updated loss runs  
[See attached statement from SVMIC](#)
2. Regarding tail coverage for any slots that are closed, do you have departed providers for which you are seeking coverage? An updated roster would be helpful to determine what this exposure entails.  
[This information is not available at this time.](#)
3. Current vendor contract for these services  
[State Volunteer Mutual Insurance Company.](#)
4. Current insurance policies for the College of Medicine Student Malpractice Insurance  
[Current](#)
5. Claims experience for this program – 5 years of loss run detail  
[See attached statement from SVMIC](#)
6. What is the current expiring premium and what carrier is the current coverage placed with?  
[Current premium on the expiring 7/01/2016 – 7/01/2017 policy with SVMIC is: \\$29,130.00](#)  
[Current carrier is State Volunteer Mutual Insurance Company.](#)
7. We cannot provide an option without the following two items, can you provide?
  1. Application – based upon the fact that exposure looks consistent, can you provide last years application?  
[Not clear what is being requested with regard to ‘application’. We provide a roster of students every year.](#)
  2. Loss runs – currently valued loss runs including a minimum the last 3 complete policy years plus current year?  
[See attached statement from SVMIC.](#)

## Schedule 6 – Labels

### **SEALED PROPOSAL LABELS**

Proposers should cut out and affix these labels to the lower left corner of the envelopes or boxes that contain their Technical Proposal and their separately sealed Premium Proposal. The original and all copies of the Technical Proposal should be contained in the same sealed box if possible. The original and copy of the Premium Proposals should be contained in one sealed envelope. The outer edge of each label should be outlined with a red marker or pen in order to make the label easily identified. See Section 8, “Proposal Submission”, in the General Information section for additional instructions. Inclusion of Premium Proposal dollar amounts, costs, or discounts in the Technical Proposal shall make the entire Proposal non-responsive.

<p>The University of Tennessee Health Science Center</p> <p><b>SEALED TECHNICAL PROPOSAL</b> <b>Collective 10054411</b></p> <p><b>DUE: May 18, 2017</b> <b>2:30 P.M. CENTRAL TIME</b></p> <p>College of Medicine Student Malpractice Insurance</p>	
<p>The University of Tennessee Health Science Center</p> <p><b>SEALED PRICING PROPOSAL</b> <b>Collective 10054411</b></p> <p><b>DUE: May 18, 2017</b> <b>2:30 P.M. CENTRAL TIME</b></p> <p>College of Medicine Student Malpractice Insurance</p>	

## Schedule 7 – General Bid Conditions

### THE UNIVERSITY OF TENNESSEE GENERAL BID CONDITIONS

**COMMITMENT TO DIVERSITY:** The University of Tennessee, consistent with state and federal law, seeks to optimize business opportunities for small and minority-owned businesses. The university will seek to do business with firms and organizations that demonstrate and embrace diversity within their programs and policies. Through these efforts The University of Tennessee will actively pursue its goal of building a more reflective marketplace for the community within the State of Tennessee.

1. **PREPARATION OF BIDS:**

- a. Failure to examine any drawings, specifications, and instructions will be at the bidder's risk.
- b. Price each item separately. Unit prices shall be shown. Discounts other than "TIME" discount offered should be deducted from the unit price. Bid prices should be Net.

2. **DISCREPANCIES:** Should any bidder find discrepancies in or, omissions from, the specifications, or be in doubt as to their meaning, the bidder shall notify the Purchasing Department at once and obtain a clarification prior to submitting a bid. Interpretations which change the terms, conditions or specifications will be made in the form of an addendum to this Request for Quotations (RFQ). If issued, the addendum will be sent promptly to all parties to whom the request for quotations has been issued.

3. **ACCEPTANCE AND REJECTION:** The university reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If a rebid is required, the university will have no obligation to provide notification to bidders other than through issuance of the rebid itself. (*return to top*)

4. **TIME OF ACCEPTANCE:** If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the university shall have sixty (60) days beyond the bid opening date to accept. (*return to top*)

5. **ERRORS IN BIDS:** In case of errors in the extension of prices in the bid, the unit price will govern. No bid shall be altered, amended, or withdrawn after specified time for opening bids. Negligence on the part of the bidder in preparing the bid confers no right for either the withdrawal or change of the bid after it has been opened. (*return to top*)

6. **AUTHORITY TO BIND:** If requested by the Purchasing Department, that person must furnish satisfactory proof of authority to bind the company in a contract. A representative or distributor bidding in the name of a principal should give the name of the firm to which an order should be issued in the event of an award.
7. **QUALIFYING STATEMENTS AND LATE BIDS:** No qualifying letters or statements will be considered. Late bids will be rejected. (*return to top*)
8. **DISCOUNTS:** Please quote any applicable educational discounts afforded to a state university. Discount for prompt payment periods of less than thirty (30) days will not be considered in the award process. Discounts offered for prompt payment will be taken if earned. Time will be computed either from the date of delivery at destination or from the date a correct invoice is received, whichever is later. Discounts shall apply to the total amount unless freight charges are itemized separately. (*return to top*)
9. **SUBMITTING BIDS:** It is the bidder's responsibility to assure that its bid is submitted in the University's electronic software purchasing system before the applicable deadline. Assistance for submitting bids can be obtained through Customer Support at 1-877-969-7246 or at [support@mercurycommercesolutions.com](mailto:support@mercurycommercesolutions.com) during normal business hours. It is the bidder's responsibility to learn how to use the system. Bids not received by the deadline, for any reason, will be rejected. Bidders are to submit all applicable and required documents with their bid. Any additional or supplemental documents which are proposed by the bidder, including but not limited to a proposed contract or terms and conditions requiring a signature from a university official, must accompany your bid in order to be considered. A bidder will not be allowed to submit additional or supplemental documents after the close of the bid process because such documents would be a prohibited bid modification. Notwithstanding anything herein to the contrary, the university has the sole discretion to accept or reject any additional or supplemental documents submitted by a bidder. (*return to top*)
10. **DELIVERY:** The number of calendar days in which delivery will be made after receipt of order shall be stated in the bidders' response. (*return to top*)
11. **EXPEDITED DELIVERY:** It is the vendor's responsibility to expedite delivery and to pay for any additional charges of special handling to prevent shipments from being late. (*return to top*)
12. **BACK ORDERS:** If it is necessary to back order any items, the vendor should notify the consignee and advise the expected shipping or delivery date. If this date is not acceptable, the university may seek remedies for default. (*return to top*)
13. **SPECIFICATIONS/BRAND NAMES:** It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the contractor. Any reference to brand names and numbers in the bid is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby

indicated will be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the referenced brands. Unless the bidder specified otherwise, it is understood that the bidder is offering a referenced brand item as specified in the bid. The university reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name referenced; and the university may require a bidder offering a substitute to supply additional descriptive material and a sample. When merchandise received from a successful bidder is not considered to be an equal by the requisitioner, it will be returned to the vendor, at the vendor's expense. (*return to top*)

14. **SAMPLES:** Samples of items, when requested, must be furnished free of charge and if not destroyed will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening of bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, bid number and item reference. The university reserves the right to keep the sample of the low bidder. DO NOT submit samples unless you are specifically requested to do so. (*return to top*)
15. **DEMONSTRATION(S) OF PRODUCTS:** The university reserves the right to require either an "in-house/on-site" demonstration of the product offered or an equivalent demonstration at a site mutually acceptable to the contracting parties to assure product performance and equivalence to university specifications. (*return to top*)
16. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidders must furnish all information requested in the spaces provided in the bid. Further, as may be applicable, each bidder must submit for bid evaluation cuts, sketches, and descriptive literature and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with the buyer will not satisfy this provision. (*return to top*)
17. **REFERENCES:** To assist in determining the acceptability and operational quality of an alternate product, the university reserves the right to request a list of current users from the vendor offering the alternate product. If requested, the references provided must be on the exact model offered in the bid and must be provided promptly. Failure to provide the necessary references upon request, or unsatisfactory references, may be considered sufficient grounds for rejecting the alternate product. (*return to top*)
18. **FOB POINT:** All prices quoted are to be FOB delivered to The University of Tennessee location stated in the bid (unless another FOB point is stated by the university). The successful bidder must assume all responsibility for damage in transit. Freight charges, if not included in the quoted price, must be itemized on the quotation and prepaid and added to the invoice. (*return to top*)

19. **INTERPRETATIONS:** Any questions concerning conditions and specifications should be directed to the Purchasing Department in writing no later than five (5) days prior to the bid opening. Inquiries must reference the date of bid opening and bid number. (*return to top*)
20. **CONFLICT OF INTEREST:** All bidders must disclose with their bid the name of any officer, director, or agent who is also an employee of the State of Tennessee, or any of its agencies (which includes The University of Tennessee). Further, all bidders must disclose the name of any state or university employee who owns, directly or indirectly, an interest in the bidder's firm or any of its branches. Bidding by state or university employees is prohibited. (*return to top*)
21. **TAXES:** The University of Tennessee is exempt from federal excise taxes and from state sales taxes on purchases of tangible personal property. Copies of the appropriate exemption documentation will be provided upon request. Contractors are responsible for the payment of taxes on tangible personal property which they use in the completion of their contracts, for which sales taxes have not otherwise been paid, irrespective of who holds title to the property or for whom the work is done. Applicable taxes are to be itemized on invoices submitted for payment. **BIDDERS ARE RESPONSIBLE FOR DETERMINING THE APPLICABILITY OF TAXES.** (*return to top*)
22. **SAFETY AND ENVIRONMENTAL STANDARDS:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies and services provided shall comply with applicable safety and environmental standards. Requisite standards include those promulgated the Tennessee Division of Radiological Health, the Occupational Safety and Health Act, the Tennessee Occupational Safety and Health Administration(TOSHA), the Tennessee Department of Environment and Conservation (TDEC) and any other regulation or related consensus standards which may apply. All hazardous substances and materials, including waster, under the control of the bidder shall be managed in accordance with the applicable EPA and TDEC regulations. Failure to abide by regulatory requirements may result in the termination of the award by the University. Any fines imposed against the University as the result of the bidder's failure to abide by regulations shall be the bidder's responsibility. (*return to top*)
23. **UNDERWRITERS' LABORATORIES:** Unless otherwise stipulated in the bid, all biomedical or medical related products shall carry U.L. approval and reexamination listing where such has been established. (*return to top*)
24. **DISPUTES:** In case of any doubt or differences of opinion as to the items to be furnished hereunder, the decision of the university shall be final and binding on both parties. (*return to top*)
25. **COMPETITION:** The University of Tennessee is exempt from the provisions of the Robinson-Patman Act when it makes purchases for its own use. (*return to top*)

26. **COMPARISON OF BIDS:** In comparing the bids and making awards, the university may consider such factors as relative quality and adaptability of equipment, supplies or services, the bidders' financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance service, the time of delivery or performance offered, and any other element or factor in addition to that of the bid price which would affect the final cost to the university and whether the bidder has complied with specifications. (*return to top*)
27. **SEPARATE AWARDS:** Where a bid provides for award by item or groups of items, separate awards will not be made unless the Purchasing Department determines, in its discretion, that there are sufficient savings to justify separate and split awards. (*return to top*)
28. **AWARDS:** Contracts and/or purchases will be made or entered into with a qualified and responsible bidder whose articles and/or services conform (considering quality and purpose or use) to the specifications, who can guarantee the delivery date specified in the invitation to bidders, who demonstrates apparent ability to perform the proposed contract, and whose bid constitutes the lowest net cost to the university. Unless the bidder specifies otherwise in their bid, the university may accept any item or group of items of any kind. The university reserves the right to modify or cancel in whole or in part in its bid. (*return to top*)
29. **AWARD INFORMATION:** At the assigned date, sealed bids are publicly opened and recorded. The file becomes public record after the bid has been thoroughly evaluated and the award determined. The file may be reviewed at the Purchasing Department. A copy of the bid tabulation and result of any University of Tennessee bid will be furnished upon request and upon payment of costs for file retrieval, copying and postage. (*return to top*)
30. **SERVICE AND WARRANTY:** Unless otherwise specified, the bidder shall define any warranty services and replacements that will be provided. Bidders shall explain in their response to what extent warranty and service facilities are provided. Any attempt to change, add, modify, or delete any warranty provision after the bid has been accepted, including by use of package labeling or inserts, will not be binding on the university unless it has so agreed in writing. (*return to top*)
31. **OPENING TIME:** In the event a bid is not received by the University in the manner specified and by the time specified and the University has not otherwise extended the time for responding in writing, the contractor/vendor may be held in default. (*return to top*)
32. **MISDIRECTED SHIPMENTS:** Any costs incurred as a result of shipments being routed to a point other than the one specified on the purchase order shall be at shipper's expense. (*return to top*)
33. **LOSS OR DAMAGE IN TRANSIT:** When shipping FOB-University, delivery by a vendor to a common carrier does not constitute delivery to the University of Tennessee. Any claim for loss of damage incurred during delivery shall be between the vendor and the carrier. Title to the

materials and supplies purchased hereunder shall pass directly from the vendor to the university at the FOB point shown, subject to the right of the university to reject upon inspection. The receiving department shall note all damages on the freight bill. The vendor shall make immediate replacement of the damaged merchandise or be subject to damages for breach of contract. If damage is to a small portion of a total shipment and the university will not be inconvenienced because of the shortage, the vendor may be permitted by the Purchasing Department to deduct the amount of damage or loss from his invoice, in lieu of replacement. (*return to top*)

34. **CONDITION AND PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current production model), unless specified otherwise, at the time of this bid. All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging. (*return to top*)
35. **PACKING LIST:** A detailed packing list showing the purchase order number must accompany all shipments. (*return to top*)
36. **INSPECTION:** All supplies purchased hereunder are subject to inspection and rejection upon receipt by the university, and rejected supplies may be returned at the vendor's expense. Transportation charges paid by the university in returning rejected supplies shall be reimbursed by the vendor. The university's count shall be final and conclusive on all shipments not accompanied by a packing slip. In addition to its right to return rejected supplies, in the event of delivery of supplies not in accordance with the requirements of this order, the university may notify the vendor of such damages or deficiencies, and if not repaired or corrected by the vendor within ten (10) days after receipt of such notice, or such additional time as may be mutually agreed to by the university and vendor, the university shall have the right to correct any damages, defects, insufficiencies or improprieties therein and do any other work necessary to put the supplies in condition for the use intended and the cost of such correction shall be deducted from monies due the vendor under this order. (*return to top*)
37. **VARIATION IN QUANTITIES:** Unless otherwise specified, any variation in the quantities herein called for, not exceeding 5 percent, will be accepted as compliance with the order when caused by conditions of loading, shipping, packing or allowances in manufacturing processes, and payments shall be adjusted accordingly. (*return to top*)
38. **IDENTIFICATION OF ORDER:** The purchase order number must appear on all invoices, correspondence, containers, shipping papers, and packing lists. (*return to top*)
39. **CORRESPONDENCE:** All correspondence pertaining to any subsequent order must be addressed as follows: The University of Tennessee Purchasing Department location indicated in the bid. (*return to top*)

40. **INVOICING AND PAYMENT:** Unless stated otherwise, the University initiates payment for materials or services upon receipt of all goods and services and receipt of an original, itemized invoice that reflects accurate contract prices. An appropriate invoice references the Purchase Order number and includes an itemized listing of the goods and/or services provided, category subtotal(s) and total cost. Invoices failing to meet this requirement may cause delay in payment or rejection of the invoice. (*return to top*)

41. **BILLING INSTRUCTIONS:**

- a. Invoice within five (5) days after shipment of material. (Additional copies of the invoice may be requested on occasion. If more copies are requested, this will be specifically stated on the face of the order.)
- b. MAIL YOUR INVOICE(S) TO THE "BILL TO" ADDRESS SHOWN ON THE ORDER. (Occasionally a different mailing address may be requested. If a different mailing address for the invoice(s) is requested, this will be stated on the face of the order.)
- c. Delivery tickets and invoices must show the Purchase Order number and must show car number when carload shipment is made.
- d. Render separate invoices, unless otherwise requested, for EACH and EVERY shipment and render invoices for returnable containers, stating terms and conditions for return thereof. (*return to top*)

43. **ASSIGNMENT:** Any Purchase Order issued pursuant to this RFQ and the monies which may become due hereunder are not assignable except with the prior written approval of the authorized representative of the university. (*return to top*)

44. **CHANGES:** The university may at any time by written instructions make changes, within the general scope of any subsequent order, in any one or more of the following: 1) Quantity or specifications; 2) Method of shipment or packing; and 3) Place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order, shall be modified in writing accordingly. Any claim by the vendor for adjustment under this paragraph must be asserted within thirty (30) days from the date of receipt by the vendor of the notification of the change; provided, however, that the university, if it decides that the facts justify such action, may receive and act upon any claim asserted at any time prior to final payment under the order.

Except as otherwise provided, no attempt by either party to waive, change, delete, add or otherwise alter any term or condition of the order shall be effective unless and until it is agreed to in writing by both parties. (*return to top*)

45. **CONTROLLING DOCUMENTS:** Compliance with the university's purchase order will be subject to all terms and conditions which comprise the university's General and Special Bid Conditions, if any, unless an exception is taken by the bidder to which the university has concurred in writing. (*return to top*)
46. **DEFAULT OF CONTRACTOR:** In case of default of the contractor, the university reserves the right to procure the articles or services from other sources and hold the contractor responsible for any excess costs incurred in remedying such default, including a reasonable attorney's fee. (*return to top*)
47. **CANCELLATION OF ORDER:** The university reserves the right to cancel the order or any part hereof without penalty, if the vendor fails to comply with the terms and conditions of this transaction, or fails to make shipment within the time agreed upon, except for causes beyond the vendor's control. (*return to top*)
48. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality workmanship or performance of the items offered on this bid prior to their delivery, it shall be the responsibility of the successful bidder to notify the Purchasing Department at once, indicating in their letter the specific regulation which required an alteration. The university reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the order at no expense to the university. (*return to top*)
49. **LEGAL REQUIREMENTS:** The successful bidder shall be responsible for compliance with all federal, state and local laws, ordinances, rules and regulations that in any manner affect the items covered herein. Lack of knowledge by the bidder will in no way be a cause for relief from responsibility for their bid. (*return to top*)
50. **LIABILITY:** The supplier shall hold and save the university, its officers, agents, and employees harmless from any claims, damages and actions of any nature arising from the use of any materials, goods or services furnished by the supplier, provided that such liability is not attributable to negligence on the part of the user or failure of the user to use the item in the manner outlined by the supplier in descriptive literature or specification submitted with the supplier's bid. The University's liability shall be governed under the terms and limits of the Tennessee Claims Commission Act. (*return to top*)
51. **PATENTS AND ROYALTIES:** The bidder, without exception, shall indemnify and save harmless the university and its employees for liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the university. If the bidder uses any design, device, or materials, covered by letters patent or copyright, it is mutually agreed and understood without exception that the bid prices shall

include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work. (*return to top*)

52. **ADVERTISING:** In submitting a bid, bidder agrees not to use the results therefrom as a part of any commercial advertising. (*return to top*)
53. **INDICIA LICENSING:** All products bearing University of Tennessee indicia must be fully licensed by the University of Tennessee Office of Trademark Licensing. (*return to top*)
54. **VENDOR:** The University will not enter into any contract which contains a clause requiring the university to indemnify or hold harmless any party. Any liability of the university will be limited to the terms and limits of the Tennessee Claims Commission Act. (*return to top*)
55. **LIMITATION OF REMEDIES:** The university will not enter into any contract which contains a clause limiting its remedies against any party. Any exception will be only to the extent permitted by Tennessee law. (*return to top*)
56. **APPLICABILITY OF PROVISIONS:** Notwithstanding anything in these conditions or other applicable conditions to the contrary, any provision(s) will not apply to the extent it is (they are) finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or constitution of the State of Tennessee. Such determination shall not affect the validity of the remainder of the contract. (*return to top*)
57. **EQUAL EMPLOYMENT OPPORTUNITY:** When awarded, this quotation is subject to provisions of Title 7 of the Civil Rights Act of 1964 and parts II, III, and IV of the Executive Order 11246, dated September 4, 1965. In connection with the execution of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship. (*return to top*)
58. **AFFIRMATIVE ACTION CLAUSE CONCERNING EMPLOYMENT FOR THE DISABLED:** By accepting this order (if it exceeds \$2500) the contractor agrees that he/she will not discriminate against any employee or applicant for employment because of disabilities with regard to any position for which the employee or applicant is qualified. The contractor agrees that he/she will take affirmative action to employ and advance in employment qualified individuals with disabilities. Rehab. Act. 29 U.S.C. Section 793 and the American with Disabilities Act (ADA), 42 U.S.C. Sections 1201 et seq. (*return to top*)
59. **UNIVERSITY OF TENNESSEE/AFFIRMATIVE ACTION STATEMENT:** The University of Tennessee is an EEO/AA/Title VI/ Title IX/Section 504/ADA employer. The university

does not discriminate on the basis of race, sex, color, religion, national origin, age, disability, or veteran status in the provision of educational programs and services or employment opportunities and benefits, pursuant to applicable federal and state laws.

UT conforms to all applicable rules, regulations and relevant orders of the Secretary of Labor. All applicable affirmative action clauses and supporting regulations are incorporated herein. (*return to top*)

60. **THE FOLLOWING SECTIONS OF THE TENNESSEE CODE ANNOTATED APPLY TO THIS INVITATION:**

Section 12-3-106: Acceptance of gifts from contractors prohibited. No officer or employee of the Department of General Services nor any member of the Board of Standards, nor any head of any state department, institution or agency charged with responsibility for initiating requisitions, shall accept or receive, directly or indirectly, from any person or firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Tennessee may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.

Section 12-4-101: Personal interest of officers prohibited. It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend, any work or any contract in which any municipal corporation, county, or the state, shall or may be interested, to be directly interested in any such contract.

It shall not be lawful for any officer, committeeman, director, or other person whose duty is to vote for, let out, overlook, or in any manner superintend any work or any contract in which any municipal corporation, county, state, development districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his interest.

Section 12-4-103: Bidding by state employees prohibited. It is hereby declared unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise, equipment or material, or similar commodity to the State of Tennessee during the tenure of his office or employment, or for six (6) months thereafter, or to have any interest in the selling of the same to the state. (*return to top*)

61. **RECORDKEEPING:** The contractor shall maintain documentation for all charges against the university under the contract. The books, records and documents of the contractor, insofar as

they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the university or the Comptroller of the Treasury for the State of Tennessee, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles. (*return to top*)

62. **GOVERNING LAW:** The contract with the university will be governed by and construed in accordance with the laws of the State of Tennessee. (*return to top*)
63. **PROTEST PROCEDURE:** Any bidder wishing to protest a Purchasing decision must initially do so in writing to the Purchasing Department within seven(7) calendar days after the basis for the protest becomes, or should have become, known. In the case of a pending award, a stay of the award may also be requested. Copies of the university's policies and procedures regarding the resolution of vendor protests may be obtained by contacting the Purchasing Department or by visiting [http://policy.tennessee.edu/fiscal\\_policy/FI0410/#8](http://policy.tennessee.edu/fiscal_policy/FI0410/#8)(*return to top*)
64. **NOTIFICATION OF AWARD:** It is the bidder's responsibility to make inquiry to the purchasing department to determine award status of the RFQ. If specific delivery dates are requested in the RFQ, the award will routinely be made to accommodate this date. No other notification may be provided. (*return to top*)
65. **PARKING PERMITS:** Vendors must conform to all parking regulations while on the University of Tennessee campus. Parking permits are available by contacting the Parking Services office on the appropriate campus. (*return to top*)
66. **GRAY MARKET PRODUCTS:** The university does not accept bids on gray market products. Bids submitted on equipment or supplies from bidders not authorized by the manufacturer to either sell, service, or warrant such equipment in the continental United States is not acceptable. Evidence to substantiate the dealer's relationship with the manufacturer may be required. (*return to top*)
67. **SUBCONTRACTS:** The successful bidder may not assign any of this award or enter into a subcontract for any of the services/products described in the award without the prior written approval of the University. (*return to top*)
68. **TRAVEL:** Unless otherwise indicated, if this award provides reimbursement for travel, meals or lodging such reimbursement must be made in accordance with University travel policy. (*return to top*)
69. **PRICE DECREASE:** Any price decrease effectuated during the contract period either by reason of market change or on the part of the contractor tendering price reductions to other customers shall be passed on to the university. (*return to top*)
70. **CANCELLATION:** Notwithstanding any other cancellation provision, this contract may be cancelled in whole or in part by the university by giving thirty (30) days' prior notice in writing

to the other party. If the successful bidder fails to perform properly its obligations under this award or violates any term of this award, the university shall have the right to terminate this agreement immediately and withhold payments in excess of fair compensation for completed services. The bidder shall not be relieved of liability to the University for damages sustained by breach of this award by the bidder. (*return to top*)

71. **EXTENSION:** The university reserves the right to extend the period of this contract, or any portion thereof, for an additional contract period. Extension of the contract period shall be by mutual agreement in writing. (*return to top*)
72. **ABNORMAL QUANTITIES:** While it is not anticipated, should any unusual or abnormal quantity requirements arise, the university reserves the right to call for separate bids thereon. (*return to top*)
73. **SUMMARY OF TOTAL SALES:** The vendor agrees to furnish the university a summary of sales made under the contract as stipulated in the special bid conditions. If this requirement cannot be met, written justification must be submitted with this bid. (*return to top*)
74. **CONTRACT PRICING:** In situations where the university has negotiated a valid contract or is a member of an organization which has a valid contract for its members to purchase items at a favorable rate, such contracts may be considered bids if in the university's best interest. (*return to top*)
75. **CANCELLATION OF CONTRACT:** The university is required by state law to purchase its requirements from state contractors if their prices are less than those prices obtained by the University of Tennessee. If during the term of this contract, a state contract is received which has lower prices, the university reserves the right to cancel all or part of this contract. (*return to top*)
76. **VENDOR ADHERENCE TO CONTRACT:** No purchases should be accepted or charged against the contract for items or pricing not covered in the contract. Failure to adhere to this requirement may be deemed grounds for cancellation of the contract. (*return to top*)
77. **NON-EXCLUSIVITY OF CONTRACT** The university will promote the use of any established contract; however, the university does not guarantee that all purchases for the products and/or services available under any contract will be made exclusively from the contract vendor. (*return to top*)
78. **INTELLECTUAL PROPERTY:** The University will possess all rights to any creations, inventions, or other intellectual property and materials, including copyrights or patents in the same, which arise out of, are prepared by, or are developed in the course of this award. The bidder and the University acknowledge and agree that the bidder's work under this award shall belong to the University as "work-made-for-hire." The bidder hereby assigns and transfers to the University all of their right, title and interest in and to any creations, inventions and other

intellectual property, and materials, including copyright or patents in the same, which arise out, are prepared by, or are developed in the course of the bidders performance under this award. (*return to top*)

79. **ILLEGAL IMMIGRANT:** The bidder shall not knowingly utilize the services of an illegal immigrant in the performance of this award and shall not knowingly utilize the services of a subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this award. (*return to top*)
80. **CLICK-THROUGH AGREEMENTS:** In the event the bidder enters into terms of use, end users agreements, or other agreements or understandings, whether electronic, click-through, or shrink-wrap and whether verbal or written, with University employees or their end users, such agreements shall be null, void, and without effect and the terms of this award shall apply. (*return to top*)
81. **DEPARTMENT OF REVENUE:** In compliance with the requirements of T.C.A. 12-4-120, the bidder hereby attests that they have registered with the State of Tennessee's Department of Revenue for the collection of Tennessee sales and use tax. (*return to top*)
82. **INSURANCE:** The bidder, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to any agreements with the University. The University shall have no liability except as specifically provided in a subsequent purchase order or contract. (*return to top*)
83. **EXTENSION OF TERMS TO OTHER INSTITUTIONS.** The successful proposer will provide the requested services for the University of Tennessee entity described in the bid. Additionally, if the successful proposer is agreeable, these services/products may also be provided to the other University of Tennessee departments and/or campuses. Similarly, The State of Tennessee and entities from The Tennessee Board of Regents may also purchase goods and/or services from this agreement, if the winning proposal is agreeable. It should be noted that these institutions, departments and campuses are not required to use this agreement. If any these institutions elect to participate under the terms and conditions of this resulting agreement, the University of Tennessee reserves the right to re-negotiate favorable incentive, and cost terms with the successful proposer that are reflective of the additional volume added as a result of participation by these institutions. Note: The offer to extend contract terms and conditions to these other institutions is at the discretion of the winning proposal and they should not be extended if it would affect your ability to offer the most favorable prices and terms to The University of Tennessee. (*return to top*)
84. **HIPAA Compliance.** Both parties certify that that they are familiar with requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this

Agreement. Both parties certify that they will cooperate with either party in the course of performance of the Agreement so that both parties will be in compliance with HIPAA, including cooperation and coordination with both party's privacy officials and other compliance officers required by HIPAA and its regulations. Both parties will sign any documents that are necessary to keep both parties in compliance with HIPAA, including but not limited to business associate agreements. (*return to top*)

85. **FERPA.** University of Tennessee is subject to the Family Education Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and related regulations of the U.S. Department of Education (34 C.F.R. Part 99) regarding access to and privacy of certain student records. The Contractor is responsible for complying with these requirements to the same extent as University. The Contractor will indemnify and hold the University, its trustees, officers, and employees harmless for any violation of FERPA by the Contractor. (*return to top*)
86. **Affordable Care Act.** The bidder agrees to provide insurance to any of its employees performing service for the university as required by the Affordable Care Act.