

# Montana Tech

## Standard Terms and Conditions

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract or purchase order, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation, contract, or purchase order.

*Montana Tech is referred to as "University" or "Montana Tech"*

### **BIDS/PROPOSALS/SOLICITATIONS:**

1. **ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The University reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the University. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.
2. **ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the University's solicitation document and a vendor's response, the language contained in the University's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.
3. **DEBARMENT:** The Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the University.
4. **FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by University Purchasing Department prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.
5. **FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the University.
6. **LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.
7. **RECIPROCAL PREFERENCE:** The University applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp>.
8. **SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the University of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

### **PURCHASE ORDERS/CONTRACTS:**

9. **ACCESS AND RETENTION OF RECORDS:** The Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the University or third party.
10. **ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)
11. **AUTHORITY:** The attached bid, request for proposal, limited solicitation, contract, or purchase order is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.
12. **CHANGES IN WORK or INCREASE IN CONTRACT/PURCHASE ORDER AMOUNT:** Prior approval must be obtained in the form of a contract addendum or purchase order adjustment from University Purchasing Department. A request by the Contractor or the University Department representative shall be accompanied by an itemized statement, which details all costs that would be incurred to effect the change. Contractor shall provide a complete statement of all actual costs to be incurred for each requested change. This information will be approved by the University Department and sent to the University Purchasing Department for the contract addendum to be signed by both parties and/or the purchase order to be adjusted.
13. **COMPLIANCE WITH LAWS:** The Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, the Equal Pay Act of 1963, and the Patient Protection and Affordable Care Act ("Affordable Care Act"). Any subletting or subcontracting by the Contractor subjects subcontractors to the same provisions. In accordance with section 49-3-207, MCA, Executive Order No. 04-2016 and Executive Order No. 12-2016 (Equal pay for women) the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression,

national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing the contract. Compliance with the Affordable Care Act requires Contractor to provide healthcare coverage for its employees, who provide services for the University, work for more than 29 hours per week and their dependents under the age of 26, and provide coverage that meets the minimum essential coverage, minimum value, and be affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and would otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the University.

#### **14. COMPLIANCE WITH THE AFFORDABLE CARE ACT:**

**Contractor is Employer:** Contractor is the employer and, therefore, responsible for providing healthcare benefits for its employees under the Patient Protection and Affordable Care Act. Contractor represents and warrants that all individuals who perform services for an agency of the State are and at all times shall remain Contractor's common law employees. Contractor further acknowledges and agrees that, throughout the term of this contract, Contractor retains the right to direct and control its employees.

**University Benefit Plans:** Contractor agrees and acknowledges that it, its agents or employees are not entitled to participate in any of the benefit plans or programs that the University now or hereafter maintain for its employees. If any state or federal court, or any local, state or federal government agency, division or other related government entity, shall determine that Contractor, its agents, or employees, are considered an employee or common law employee of the University, or if for any reasons Contractor, its agents or employees, were to meet the eligibility criteria with respect to any benefit plan or program now or hereafter available to University employees or otherwise become eligible to participate in any University-sponsored benefit plans or programs, Contractor, its agents, or employees, waive any right to participate in, either retrospectively or prospectively, or receive any benefits under any University-sponsored benefit plans or programs. This waiver of any right to participate in University-sponsored employee benefit programs represents a material component of the terms and compensation agreed to by these parties and is not in any way conditioned on any representation or assumption concerning status of Contractor, its agents, or employees, with respect to the University, as employee, common law employee, independent contractor or temporary employee.

**Contractor Provided Health Care Coverage:** Contractor represents and warrants that it will offer to all its agents or employees, who perform services for the University under this contract for more than 29 hours per week and their dependents under age 26, health care coverage under its health care plans and that such coverage provides minimum essential coverage, provides minimum value, and is affordable for purposes of the employer responsibility provisions under Section 4980H of the Code, and would otherwise satisfy the requirements of Code § 4980H if provided by the University.

**Reporting Requirements:** Contractor further represents and warrants that it will satisfy all reporting requirements under Code §§6055 and 6056 with respect to individuals who perform services for the University.

**Auditing:** The State may audit Contractor's operations to ensure that the representations and warranties set forth above have been complied with.

**Additional Costs:** As consideration for this amendment, the fees paid to Contractor by the University are revised to include an additional fee in the amount of **(amount to be negotiated)** ( %) of the actual cost of coverage attributable to those individuals who perform services for the University and who elect medical coverage under Contractor's medical plans. For this purpose, the "actual cost of coverage" shall equal the cost of coverage determined for purposes of compliance with the continuation of coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), reduced by the 2% COBRA administration fee and further reduced by the portion of such cost paid by the individual electing coverage, which shall be no less than **50%** of such cost, except to the extent necessary to meet the affordability requirements under Code § 4980H. The actual cost of coverage shall be determined on a payroll period basis and paid only for those pay periods during which the individual performing services is enrolled in Contractor's medical plan.

**15. COMPLIANCE WITH WORKERS' COMPENSATION ACT:** Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the University in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are University employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to Montana Tech, Purchasing Department, 1300 West Park Street, Butte, MT 59701.

**16. CONFIDENTIALITY:** Contractor agrees that information not generally known to the public to which the Contractor has been or will be exposed as a result of the Contractor's work with and for the University is confidential information that belongs to the University. This includes information developed by the Contractor, alone or with others, or entrusted to the University by its customers or others. The University's confidential information includes, without limitation, information relating to the University's trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, distributors, and employees. Contractor will hold the University's confidential information in strict confidence and will not disclose or use it except as authorized by the University for the University's benefit. Contractor also acknowledges and agrees not to disclose, and has not been asked to disclose, confidential information learned from prior individuals or companies. The confidentiality provision of this agreement shall survive after the Contractor's services to the University ends, regardless of the reason it ends, and shall be enforceable regardless of any claim the Contractor may have against the University.

**17. CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without University Purchasing Department prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

**18. CONTRACTOR:** The Contractor is an independent contractor or a business providing services for the University. Neither the Contractor nor any of his employees are employees of the University or any agency or division thereof, nor will they be considered employees of the University under any subsequent amendment to the contract or purchase order unless otherwise expressed.

**19. DISABILITY ACCOMMODATIONS:** The University does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**20. FORCE MAJEURE:** Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a

reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5 day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation need not be performed because of the condition.

**21. HOLD HARMLESS/INDEMNIFICATION:** The Contractor agrees to protect, defend, and save the University, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the University, under this agreement

**22. ADDITIONAL INDEMNIFICATION:** Claims under this provision with the Affordable Care Act also include those arising out of or in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

**23. INVOICES:** At no time is a vendor authorized to submit a purchase order invoice directly to an individual or the ordering department. Except where stipulated otherwise on the purchase order, address all invoices to:

**Montana Tech Accounts Payable 1300 West Park Street Butte, MT 59701**  
**Invoices may be submitted by e-mail to [AccountsPayable@mtech.edu](mailto:AccountsPayable@mtech.edu)**

**24. PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the University is allowed 30 days to pay such invoices. (See section 17-8-242 MCA).

**25. REDUCTION OF FUNDING:** The University must terminate this contract if funds are not appropriated or otherwise made available to support the University's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**26. REFERENCE TO PURCHASE ORDER:** The purchase order number **MUST** appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the University is not obligated to pay the invoice.

**27. REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

If you are conducting business under your own full legal name, you do not need to register with the Secretary of State.

**28. SEVERABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**29. SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**30. SUBCONTRACTS:** The Contractor may not transfer, assign or subcontract this contract or resulting purchase order or any interest therein without the express written approval of the University. In the event a subcontract is authorized by the University, the Contractor will inset in any subcontract the clauses set forth in this contract and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into together with a clause requiring this insertion in any further subcontracts that may in turn be made.

**31. TAX EXEMPTION:** The University is exempt from Federal Excise Taxes.

**32. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no University funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) In addition, Contractor acknowledges that such information technology equipment and software will provide equal and effective access to all individuals in accordance with federal and state laws and regulations, including, but not limited to the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and Section 508 of the 1973 Rehabilitation Act.

**33. TERMINATION OF CONTRACT:** Unless otherwise stated, the University may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

**34. U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**35. VENUE:** This solicitation/bid/proposal/contract/purchase order is governed by the laws of Montana. The parties agree that any litigation concerning this solicitation/bid/proposal/contract/purchase order must be brought in the District Court for Silver Bow County, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

**36. WARRANTIES (NON-INFORMATION TECHNOLOGY):** The Contractor warrants that the products offered conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect. The Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless the University specifies otherwise. Exceptions will be rejected.

**37. WARRANTY FOR INFORMATION TECHNOLOGY SERVICES:** The Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this contract. University agrees to provide timely written notice of any failure to comply with this warranty so that the Contractor can take corrective action.

**38. WARRANTY FOR SOFTWARE:** For a period of ninety (90) days from the date of receipt of software, the Contractor warrants that: (i) the unmodified software will provide the features and functions, and will otherwise conform to all published documentation including on the Contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

**39. WARRANTY FOR INFORMATION TECHNOLOGY HARDWARE:** The Contractor warrants that hardware provided is free from defects in materials and workmanship and conforms to the specifications. The warranty period for provided hardware is a fixed period commencing on the date specified in a statement of work or applicable contract. If the hardware does not function as warranted during the warranty period and the Contractor is unable to either: i) make it do so; or ii) replace it with one that is at least functionally equivalent, University may return it to the Contractor for a full refund.

#### **40. WARRANTIES (INFORMATION TECHNOLOGY SPECIFIC)**

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

These warranties are the University's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

#### **41. REQUIRED INSURANCE**

Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**Certificate of Insurance.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by University prior to contract execution. Please send to contract liaison at Montana Tech, 1300 West Park Street, Butte, MT 59701. Endorsement No. or documentation must be provided for Additional Insured Status. This insurance must be maintained for the duration of the contract. The Contractor must notify the University immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The University reserves the right to require complete copies of insurance policies at all times.

**Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The University, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The University, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal acquisition such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgments as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work