

MIDWESTERN STATE UNIVERSITY

REQUEST FOR PROPOSAL #735-16-4242-2

IDIQ Time and Materials/Unit Price Contract for Concrete Flatwork and Asphalt Repair Services

ELECTRONIC OR SEALED PROPOSALS WILL BE ACCEPTED

UNTIL: **2:00 P.M., July 06, 2016**

Purchasing Department
3410 Taft Blvd., Daniel Bldg., Rm. 200
Wichita Falls, Texas 76308

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to all offers made to Midwestern State University (herein after referred to as "University") by all prospective vendors (herein after referred to as "Bidders") on behalf of Solicitations including, but not limited to, Invitations to Bid and Request for Proposals.

INSTRUCTIONS FOR SUBMITTING PROPOSALS

Review this document in its entirety. Be sure your proposal is complete and accurate.

Questions requiring only clarification of instructions or specifications will be handled verbally. If any questions results in a change or addition to this Request for Proposal (RFP), the change(s) and addition(s) will be forwarded to all vendors involved as quickly as possible in the form of an addendum.

Sign the **Vendor's Affidavit Notice** and return with your proposal.

BIDDERS SHALL SUBMIT ELECTRONICALLY OR HAND DELIVER, SIGN THE VENDOR AFFIDAVIT, AND RETURN ENTIRE PROPOSAL PACKET. In the event of inclement weather and the University Offices are officially closed on a proposal opening day, proposals will be received until 2:00 p.m. of the next business day.

PROPOSALS SUBMITTED AFTER THE SUBMISSION DEADLINE SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.

SUCCESSFUL BIDDER WILL BE NOTIFIED BY MAIL. All responding bidders will receive written notification regarding the outcome of the award.

PLEASE NOTE CAREFULLY

THIS IS THE ONLY APPROVED INSTRUCTIONS FOR USE ON YOUR PROPOSAL. ITEMS BELOW APPLY TO AND BECOME PART OF TERMS AND CONDITIONS OF BID. ANY EXCEPTIONS THERETO MUST BE IN WRITING.

Proposal shall be placed in a sealed envelope and properly identified with the name and number of bid (RFP#735-16-4242 Time & Materials for IDIQ Concrete)

-
1. Proposals must be in the Purchasing Office **BEFORE** the hour and date specified.
 2. Proposals **MUST** give full firm name and address of the bidder. Failure to manually sign proposal forms will disqualify bid from evaluation. Person signing bid should show TITLE or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT.
 3. Proposals **CANNOT** be altered or amended after opening time. Any alterations made before opening time must be initialed by bidder or his authorized agent. No bid can be withdrawn after opening without the approval by the Vice-President of Business & Finance based on a written acceptable reason.
 4. The University is exempt from State Sales Tax and Federal Excise Tax. **DO NOT INCLUDE TAX IN PROPOSAL.**
 5. Delivery of Services: Bid must show number of days required to complete project. Unrealistically short or long delivery of service promises may cause bid to be disregarded.
 6. Contract recipient agrees to utilize Historically Underutilized Businesses as either subcontractors and/or suppliers to the best of his /her ability.
 7. If delay is foreseen, bidder shall give written notice to Director of Purchasing & Contract Management. The University has the right to extend delivery of service date if reasons appear valid. Bidder must keep University advised at all times of status of work progress. Default in promised delivery of service timeframe (without acceptable reasons) authorizes the University to cancel the agreement and charge full increase in cost of project to defaulting bidder.
 8. All materials used shall be new, in first class condition unless otherwise indicated in bid. Verbal agreements to the University will not be recognized. All materials and services shall be subject to the University's approval.
 9. The University reserves the right to accept or reject all or any part of the bid and award to the best value of the University.
 10. This is a Request for Proposal inquiry only and implies no obligation on the part of the University.

11. Acceptance of and final payment for the item will be contingent upon satisfactory performance of the services received by the University.
12. **Award:** A written purchase order or notice of award mailed or otherwise furnished to the successful bidder within the time of acceptance specified in this package results in a binding contract without further action by either party.
13. **Invoicing:** Bidder shall submit one original itemized invoice showing bid number and purchase order number to:

**Midwestern State University
Purchasing Department
3410 Taft Blvd., Daniel Building, Room 201
Wichita Falls, TX. 76308**

14. **Payments:** The University, after receipt of and satisfaction of completed services will make payment to the contractor within 30 days from the receipt of invoice.
15. All costs quotations must include all the various features needed to satisfy the requirements. Note: No amounts will be paid for the items in this BID in excess of the amounts quoted.

Requests for Proposals

It is the intent of these specifications to describe the minimum requirements for requested services to allow Midwestern State University in sufficient detail to secure comparable bids. Each bidder must confirm he/she fully understands these specifications and the University's needs and satisfies himself/herself that he/she is cognizant of all factors relating to requirements contained in these specifications.

The bid analysis will include compliance to bid specifications, past performance with vendor (if any), references, delivery of services timeframe and the overall cost to the University. Midwestern State University reserves the right to consider deviations from these specifications.

Award of this bid will be contingent on Midwestern State University's ability to provide funding for the purchase of the equipment.

References shall be included on this bid form. Three current customers with a comparable purchase shall be listed with complete name, address, telephone number and contact person.

The bidder shall return the entire bid/specification package, with their bid, which will constitute a contract equally binding between the bidder and Midwestern State University if the University accepts the bid. Each bid shall be placed in a sealed envelope, manually signed in ink by a person having the authority to bind his/her firm in a contract.

This contract shall remain in effect until delivery and acceptance by the University. Midwestern State University reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the University in the event of breach or default if this contract. Midwestern State University reserves the right to terminate the contract immediately in the event the successful bidder fails to make delivery in accordance with the specifications.

Questions concerning these specifications should be directed, via email, no later than May 21, 2016 by email to:

Ms. Lori Case, Assistant Director of Purchasing/Contract Management
3410 Taft Blvd. Daniel Bldg. Rm. 200
Wichita Falls, TX. 76308
(940) 397-4041
lori.case@mwsu.edu

Midwestern State University may in its sole discretion respond in writing to questions concerning this bid request. Only MSU responses made by formal written addendum to this proposal shall be binding and **shall be posted on the MSU purchasing web site** located at <http://mwsu.edu/purchasing/>. Oral or other written interpretations or clarifications shall be without legal effect.

All bids meeting the intent of this request for proposal will be considered for award. Bidders taking exception to the specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. The absence of such a list shall indicate that the bidder has not taken exception and shall hold the bidder responsible to perform in strict accordance with the specifications of the invitation. Midwestern State University reserves the right to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the University.

IDIQ TIME AND MATERIALS/UNIT PRICE CONTRACT FOR CONCRETE FLATWORK AND ASPHALT REPAIR SERVICES

SCOPE

General:

Midwestern State University solicits responses to the Request for Proposal (RFP) for qualified firms interested in **providing concrete flatwork and asphalt repair services** for the Midwestern State University facilities.

I. PROJECT BACKGROUND:

- A. Midwestern State University (MSU), through its Facilities Services, maintains concrete and asphalt throughout campus.
- B. In order to provide for timely installation, replacement and repair of concrete and asphalt surfaces on campus the Facilities Services Department is seeking unit price quotes and time and materials service agreement with a firm who can provide these services. Purchase Orders will be executed using individual “Project Assignments” with the total value of services not to exceed **\$100,000** over a period of one fiscal year. There is no guarantee that any specific minimum dollar amount of fees will be awarded.

The award of individual “Project Assignments” shall be based on the expertise of the Service Provider, their successful performance on prior assignments, the number of projects, and the availability of funding for projects. **Upon mutual consent between parties to the original Contract, the contract(s) may be extended for a period of two (2) additional one calendar year renewals under the same terms and conditions.** The selected firm(s) shall contract with the University based prices quoted in the RFP and that comply with the policies of Midwestern State University.

II. SCOPE:

The Scope of Work will vary from project assignment to project assignment in complexity and the scope of services to be provided by the Contractor. Services to be provided may include one or more of the items of service listed below:

1. Review of plans and specifications for constructability.
2. Estimating services.
3. Assisting Facilities Services staff in developing the client’s program needs.
4. Full cost documentation including daily work logs.

For projects which may include:

New sidewalk and small concrete slab installation, removal and replacement of existing concrete sidewalks, patching of asphalt paving, removal and replacement of small areas of asphalt paving.

Respondent Submission:

Midwestern State University will not be responsible for any expenses relating to response development, documentation, or interview/presentation that may result from this solicitation. Failure to provide the following information shall result in the disqualification of your response.

- The respondent shall submit one original response (marked Original) and three response copies (marked Copy) of the response submittal.
- Responses shall be on single-sided 8 ½" x 11" paper.
- Response information submitted shall correspond to the sections listed below and shall be in the following order:
 1. Company name, address, phone number, legal status (corporation, partnership, etc.).
 2. Name, phone number and e-mail address of person Midwestern State University should contact with any questions.
 3. Name and title of person submitting solicitation.
 4. Documentation of vendor history, including capabilities in the area of services to be provided, size and scope of operation. This shall include similar experience, including scope of work that demonstrates an expertise in providing the required services, and number of years in business.
- The respondent shall provide at least three references.
- The respondent shall document a time frame when vendor will be ready to provide the required services at Midwestern State University.
- Ensure the proposal is signed by the owner, principal partner, or chief executive officer, otherwise the proposal will not be accepted.

Selection Procedure:

Following receipt and evaluation of responses to the RFP a firm or firms will be selected for further consideration. Responses to the RFP will be evaluated by an appointed committee, seeking to grade responsiveness for technical qualifications and the firm's ability to provide the services. Firms may be requested to make presentations if deemed necessary. Negotiations will begin with the firm determined to be most qualified for the project.

Proposal Evaluation:

The following criteria will be used to evaluate all submissions. Proposals must be organized and tabbed in accordance with the below evaluation criteria:

No.	Criteria	Weight
1	Past performance in terms of quality work and compliance with performance schedules. Firm should highlight particular areas of expertise.	20%
2	Prior favorable service with colleges and universities.	5%
3	Prior favorable service to Midwestern State University	15%
4	Proposed labor rates and markup percentages, and unit costs	60%
5	Demonstrated knowledge of local building codes.	Mandatory
6	Overall team approach towards working with the owner, owner's representative, and client.	5%
7	Completeness and general response to this Request for Proposal.	5%

It is understood that Midwestern State University reserves the right to accept or reject any and/or all responses to this RFP as it shall deem to be in the best interest of the University.

STATEMENT OF WORK

1.01 In General: The Concrete Flatwork Provider agrees to provide construction and technical services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. These services are generally described as, but are not limited to sidewalk and road repairs or replacement, painting of traffic lines, and erosion control per MSU Construction Standards.

1.02 Project Scope: The specific scope of work for each project shall be determined in advance and in writing between the Owner and the Concrete Flatwork Provider. Projects types that will either use unit prices to include all labor, materials and equipment or be priced on as cost plus to perform based on a minimum quantity of concrete of either (a) greater than or (b) less than of 3 cubic yards:

- A. Erosion control, excavation, and relocation of excavated and demolished material
- B. Compaction of sub-grade
- C. Placement and compaction of base material
- D. Placement of tack oil compound
- E. Placement and compaction of hot mix asphaltic concrete
- F. Placement of traffic line marking paint
- G. Placement of car stops (made of recycled materials)
- H. Replacement/Additions of small sections of concrete sidewalk to include ramps, as needed
- I. Concrete curbing removal/replacement

QUOTE FORM

Flatwork Unit Pricing

ITEM DESCRIPTION UNIT	UNIT COST
Remove 4" sidewalks and slabs, form and replace with 4 inches of 3000 psi concrete with 3/8" rebar on 18" centers	Sq. Ft
Install new 4" sidewalks and slabs with 4 inches of 3000 psi concrete with 3/8" rebar on 18" centers	Sq. Ft
Remove 6 inch sidewalks and slabs, form and replace with 6 inches of 3000 psi concrete with 1/2" rebar on 18" centers.	
Install new 6 inch sidewalks and slabs with 6 inches of 3000 psi concrete with 1/2" rebar on 18" centers.	Sq. Ft
Remove and replace bad areas of asphalt and other paved surfaces – saw cut, replace failed base as needed or with a minimum of 3" and 2" of hot mix asphalt paving.	Sq. Yd
Minimum quantity of paving required for a single mobilization	
Remove and install 6 inch header curb to a 16" depth with 3000 psi concrete reinforcing shall be industry standard spacing with 1/2" rebar.	Lin. Ft
Install 6 inch header curb to a 16" depth with 3000 psi concrete reinforcing shall be industry standard spacing with 1/2" rebar.	Lin. Ft.
Plus Mobilization charge	
Base price for asphalt to be used to calculate pass through costs or credits based on market price	Sq. Yd
Base price for tack oil to be used to calculate pass through costs or credits based on market price	Gallon

MSU will not schedule normal concrete repair work of less than a 3 cubic yard minimum per day.

Supply an insurance certificate with your Bid if new to MSU.

Supply a W-9 with your Bid if new to Midwestern State University.

Time and Material Pricing (Cost Plus)**Labor**

List labor classes self-performed with standard hourly rate:

<u>Labor Class</u>	<u>Hourly Rate</u>
--------------------	--------------------

Laborer	_____
---------	-------

Concrete Finisher	_____
-------------------	-------

Supervisor	_____
------------	-------

Markups

Labor Burden	_____ %
--------------	---------

Materials	_____ %
-----------	---------

Equipment Rental	_____ %
------------------	---------

Overhead (office, supervision, equipment, etc.)	_____ %
---	---------

Profit	_____ %
--------	---------

Late statements and facsimiles will not be accepted. Each firm is responsible for insuring responses to the RFP have been delivered by date, time and location specified.

Questions regarding the solicitation process shall be directed

to: Lori Case at lori.case@mwsu.edu by May 21, 2016.

VENDOR REFERENCES

Please list three (3) references of current customers who can verify the quality of service your company provides. The University prefers customers of similar size and scope of work to this proposal. ***THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL.***

REFERENCE ONE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

REFERENCE TWO

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

REFERENCE THREE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

AFFIDAVIT

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final and if bid is accepted (within 90 days unless otherwise noted by vendor), agrees to furnish any and/or all items upon which prices are offered, at the price(s) and upon the conditions contained in the Specifications.

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____,

on this day personally appeared _____

who, after having first been duly sworn, upon oath did depose and say;

That the foregoing proposal submitted by _____

hereinafter called "Bidder" is the duly authorized agent of said company and that the person signing said proposal has been duly authorized to execute the same. Bidder affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

Name and Address of Bidder:

Telephone Number:

Signature

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ day of _____,
20 _____.

Notary Public in and for the State of _____.

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

This Standard Purchasing Agreement ("Agreement") is entered into between the **Midwestern State University ("University") and, ("Contractor")**. University and Contractor may be referred to singularly as a "Party" and collectively as the "Parties." The Parties mutually agree and covenant as follows:

1. **TERM:** The term of this Agreement ("Term") will begin on _____, and end on _____, unless terminated earlier pursuant to the terms of this Agreement or extended by mutual written agreement of the Parties.

2. **GOODS/SERVICES :**

☐ Check here if an exhibit, offer, proposal or other similar document (collectively, "Attachment") is being added as part of this Agreement. Any such Attachment: (i) should be described above in this Section 2 and attached to this Agreement; and (ii) is hereby incorporated by reference. In the event of any inconsistency between the Attachment and this Agreement, or any other similar document of Contractor and this Agreement, this Agreement will prevail.

3. **COMPENSATION:** Check one box only:

☒ **This is a fixed price contract.** University will pay Contractor the amount of **\$0.00**.

☐ **This is not a fixed price contract.** University will pay Contractor an amount not to exceed \$ _____ based on an hourly fee and /or other method of calculation as follows:

☐ **This is not a fixed price contract and will be performed on a service-order basis.** University will pay Contractor an amount not to exceed \$ _____ (based on service order form(s) to be completed and signed by the Parties, a version of which will be provided to Contractor by University). University will engage Contractor on an "as-needed if needed" basis and does not guarantee the purchase of any quantity or dollar amount of services.

4. **PAYMENT TERMS:** Contractor shall submit detailed invoices to University describing the services rendered the times when such services were performed, compensable expenses and the amount due. University will pay undisputed amounts within thirty (30) days of receiving goods or invoices, whichever occurs later. Payment terms are subject to Chapter 2251 of the *Texas Government Code*. Contractor understands and agrees that payments under the Agreement may be subject to the withholding requirements of §3402(t) of the *Internal Revenue Code*. University, an agency of the State of Texas, is exempt from Texas sales and use tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (TAC) Section 3.322.

Notwithstanding any contrary provision of this Agreement, each payment obligation of the University created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of the goods or services. If such funds are not allocated and available, this Agreement may be terminated by the University. The University shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to the

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

University in the event this provision is exercised, and the University shall not be obligated or liable for any future payments due or any damages as a result of termination under this section. This provision shall not be construed so as to permit the University to terminate this Agreement in order to purchase, lease, or rent similar goods or services from another party.

5. **ELIGIBILITY TO RECEIVE PAYMENT:** In accordance with Section 231.006 of the *Texas Family Code* and Sections 2155.004 and 2155.006 of the *Texas Government Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is or becomes inaccurate. Contractor acknowledges that, in accordance with Section 403.055 of the *Texas Government Code*, as applicable, if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to Contractor, Contractor agrees that payment under this Agreement will be applied to the debt or delinquent taxes are paid in full. And pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
6. **CONTRACTOR'S STATUS AND RESPONSIBILITIES:** In performing the services, Contractor will be deemed an independent contractor and not the University's agent or employee. This Agreement will not be construed to create any partnership, joint venture or other similar relationship between the Parties. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the services. Contractor shall perform the services in strict accordance with this Agreement and in accordance with the highest standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar services.
- ☐ Check here if Contractor is an individual and has been a temporary or permanent employee of the State of Texas (including any employment with Midwestern State University) within the past two (2) years; if so, Contractor must attach a separate statement setting for the name of the agency or department by which Contractor was employed, the dates of employment, the annual rate(s) of compensation during such employment and the nature of the Contractor's duties.
7. **INTELLECTUAL PROPERTY:** Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.
8. **OWNERSHIP OF WORK PRODUCT:** All work products, including any software, research, reports, studies, data photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligation under this Agreement will be deemed work for University upon completion, termination or cancellation of this Agreement. Any program data or other materials furnished by University for use by Contractor in connection with the services performed under this Agreement will remain University's property.
9. **INDEMNITY:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless University, and each of their directors, officers, agents and employees from and against all liability, loss, expense (including reasonable litigation costs and attorney fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, "Claim") to the extent the Claim arises from the negligence, willful act, breach of contract or violation of law by Contractor, its employees,

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

agents, contractors or subcontractors.

10. **INSURANCE:** Unless an appropriate University representative agrees to waive the requirements by initialing the designated space near the signature block below, Contractor shall comply with general liability insurance coverage of \$1,000,000 per occurrence. If, during the term, Contractor will enter University property, Contractor shall also maintain the following insurance: (i) worker's compensation coverage as required by law with statutory limits for the State of Texas, including employers liability coverage of \$500,000 per accident; (ii) commercial automobile liability coverage of \$1,000,000 combined single limit; (iii) for engineers and architects only: professional liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: builders risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against University. Comprehensive general liability and commercial automobile liability policies must name University as additional insured. Contractor shall provide certificates of Insurance evidencing the insurance requirements prior to the start of work.
11. **INSPECTION AND ACCEPTANCE OF SERVICES:** University reserves the right to inspect the services provided under this Agreement at all reasonable times and places during the term. If any of the services do not conform to the requirements set forth in this Agreement, University may (i) require Contractor to perform the services again in conformity with such requirements, with no additional charge to the University; or (ii) equitably reduce payment due Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to University in this Agreement or otherwise available at law.
12. **RISK OF LOSS:** All work performed by Contractor pursuant to this Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by University. In the case of any loss or damage to the work prior to the University's acceptance, such loss or damage will be Contractor's responsibility. Delivery of any goods to University pursuant to this Agreement must be FOB destination.
13. **COMPLIANCE:** Contractor shall observe and abide by all applicable state and federal law requirements and University policies and procedures. Contractor shall certify that he/she or it is in compliance with all applicable state and federal laws as it relates to the terms and conditions of this Agreement.
14. **CONFIDENTIALITY; DATA PROTECTION:** Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. As applicable, Contractor shall maintain and process all information it receives in compliance with all applicable data protect/privacy laws and regulations and University policies.
15. **PUBLICITY:** Contractor shall not use University's name, logo or other likeness in any press release, marketing material or other announcement without University's prior written approval.
16. **SUBCONTRACTORS:** If Contractor is permitted to subcontract any of the services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

the services.

17. **PRODUCTS AND MATERIALS PRODUCED IN TEXAS:** In performing its obligations under this Agreement, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas. [Section 2155.4441 of the Texas Government Code]
18. **TRAVEL EXPENSES:** In the event the Agreement requires the University to reimburse Contractor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.
19. **BONDS:** If applicable to the Services and this Agreement, Contractor shall secure payment and/or performance bonds in accordance with Section 2253.021 of the Texas Government Code upon executing this Agreement.
20. **AUDIT:** Execution of this Agreement constitutes Contractor's acceptance of the authority of University, the Texas State Auditors and/or their designated representative (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Contractor agrees to cooperate with the Auditor conducting such audits or investigations and to provide all information and documents reasonably requested.
21. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
22. **DEFAULT:** A party will be in default of this Agreement if such Party fails to comply with any obligation in this Agreement and such failure continues for ten (10) days after receiving written notice from the non-defaulting Party. In the event of default, upon written notice to the defaulting Party, the non-defaulting Party may terminate this Agreement as of the date specified in the notice, and may seek other relief as provided by law.
23. **TERMINATION FOR CONVENIENCE:** University may terminate this Agreement in writing at any time upon providing at least thirty (30) days written notice to Contractor. University will only be liable for payment for Services received prior to the effective date of such termination.
24. **NOTICE:** Any notice required or permitted by this Agreement must be in writing and addressed to the Party at the address set forth below, or such other address as is subsequently specified in writing. Notice will be effective at the date: (i) delivered by national courier service or Registered/Certified Mail, postage prepaid, return receipt required, or (iii) received by facsimile.
25. **BREACH OF CONTRACT CLAIMS:** To the extent Chapter 2260 of the *Texas Government Code* is applicable to this Agreement and is not preempted by other law, the dispute resolution process provided by Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by the Parties to attempt to resolve any claim for breach of contract made by Contractor against University that cannot be resolved in the ordinary course of business. An event or claim for breach of contract is not grounds for Contractor to suspend performance under this Agreement. The Parties specifically agree that (1) neither the execution of the Agreement by

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

University nor any other conduct, action or inaction of any representative of University relating to the Agreement constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (2) University has not waived its right to seek redress in the courts.

26. **FUNDING CONTINGENCY:** University's performance under this Agreement may be dependent upon appropriation of funds by the Texas State legislature ("Legislature") and/or allocation of funds by University's Board of Regents ("Board"). If the Legislature fails to appropriate the necessary funds or the Board fails to allocate the necessary funds, University may terminate this Agreement without liability by providing written notice to Contractor.
27. **CONTRACTOR REPRESENTATIONS:** If Contractor is a business entity, it represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Texas; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so. If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
28. **WAIVER:** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as waiver of any subsequent breach.
29. **SURVIVAL:** Termination or expiration of this Agreement will not affect the Parties' rights obligations that, by their nature and context, are intended to survive termination or expiration.
30. **ELECTRONIC DELIVERY:** Execution and delivery of this Agreement by exchange of email or fax copy containing the signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party.
31. **LIMITATIONS:** The University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on the University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; indemnities; and confidential information. Terms and conditions of this Agreement relating to these limitations will only be binding on the University to the extent permitted by the Constitution and the laws of the State of Texas.
32. **JURISDICTION AND VENUE; GOVERNING LAW:** It is expressly understood and agreed that the location and place of performance for this Agreement is stipulated to be in Wichita Falls, Wichita County, Texas, and the proper place of venue for suit of all disputes arising under this Agreement shall solely be in Wichita County, Texas. This Agreement and all of the rights and obligations of the Parties thereto and all of the terms and conditions hereof will be construed, interpreted and applied in

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

accordance with and governed under the laws of the State of Texas.

33. **AUTHORITY:** The person signing below on behalf of the University and Contractor warrants that he/she has the authority to execute this Agreement according to its terms.
34. **OFFICIAL NOT TO BENEFIT:** No trustee, officer, director, regent, employee, administrator and representative of University shall be admitted to any share or part of this Agreement or to any benefit that may arise there from.
35. **NONDISCRIMINATION:** Contractor shall comply with State of Texas and federal civil rights laws and University policies prohibiting discrimination and harassment. Contractor shall not discriminate against an employee or applicant for employment with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, gender, national origin, age, sexual orientation, veteran status, or disability that is unrelated to the individual's ability to perform the duties of a particular position. A breach of this covenant may be regarded as a material breach of this Agreement.
36. **NON-ASSIGNABLE CONTRACT:** This Agreement cannot be assigned, in whole or in part, by either party.
37. **MISCELLANEOUS:** This Agreement, together with any Attachment(s), constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior contracts, agreements, representation and understanding made by the Parties relating to such subject matter. This Agreement may not be waived, altered, amended or otherwise modified except by the written agreement of both Parties. Contractor may not assign this Agreement with University's prior written consent. The invalidity or unenforceability of any provision(s) of this Agreement will not impair the validity and enforceability of the remaining provisions.
38. **EFFECTIVE DATE:** This Agreement shall be deemed to be effective on _____ and is signed by the respective Parties on the dates of their respective signatures as appear below.

<p>INSURANCE REQUIREMENTS WAIVER - IF the Insurance Requirements are not applicable to the services or if University otherwise chooses to waive such requirements for purposes of this <u>Agreement</u>, the appropriate University representative may waive the requirements by initialing here -----> _____.</p> <p>Otherwise, Contractor must satisfy the insurance requirements specified in this Agreement.</p>
--

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

IN WITNESS WHEREOF:

Midwestern State University:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

_____:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SAMPLE