



Attachment B
Terms and Conditions

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## **1. LEGAL AUTHORITY**

The University is part of the State of Florida’s State University System, established by article IX, section 7, of the Florida Constitution and governed generally by the Florida K-20 Education Code, chapters 1000 through 1013, Florida Statutes. The proposed structure of the engagement is authorized by section 1001.72(1), Florida Statutes, which states each university “board of trustees shall be a public body corporate”...“with all the powers of a body corporate, including the power... to contract and be contracted with” and section 1013.171(1), which provides that “[e]ach university board of trustees is authorized to negotiate and enter into agreements to lease land under its jurisdiction to for-profit and nonprofit corporations, registered by the Secretary of State to do business in this state, for the purpose of erecting thereon facilities and accommodations necessary and desirable to serve the needs and purposes of the university...” and that “[s]uch agreement will be for a term not in excess of 99 years or the life expectancy of the permanent facilities constructed thereon, whichever is shorter, and shall include as a part of the consideration provisions for the eventual ownership of the completed facilities by the state.”

## **2. GENERAL TERMS**

The following are the terms and conditions that will become part of any agreement consummated between the University and the awarded respondent. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following will be the order of precedence: the Agreement; Solicitation; Proposal.

### **2.1. Actions of Awarded Respondent.**

The University is under no obligation whatsoever to be bound by the actions of any awarded respondent with respect to third parties. The awarded respondent is not an agent of the University.

### **2.2. Actions of Proposer.**

The University is not bound by the actions of any proposer with respect to third parties. The proposer is not a division or agent of the University.

### **2.3. Americans with Disabilities Act.**

The awarded respondent must comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the Act.

### **2.4. Annual Appropriations.**

The University’s performance and obligations under any agreements resulting from this ITN are subject to and contingent upon annual appropriations by the Florida Legislature and other funding sources.

### **2.5. Assignment.**

The awarded respondent may not assign any obligations or rights under the agreement without express written permission from the University and any attempted assignment will be void.

### **2.6. Background Check.**

All of proposer’s employees who enter the University campus or premises must have passed an employer background check and must not be listed on the Florida or National Sex Offenders Registry.

**2.7. Collusion Prohibited.**

Proposer's collusion with other proposers, other proposers' employees, or any employee of the University is prohibited and may result in rescission or cancellation of solicitation (or award) without liability to the University.

**2.8. Conflict of Interest.**

The award of this competitive solicitation is subject to the provisions of Florida Statutes, Chapter 112, and any other laws, regulations and/or policies concerning conflicts of interest in dealing with entities of the State of Florida (collectively, "Conflicts of Interest Rules"). Submission of a solicitation response, and acceptance of a Contract/lease resulting from this ITN, will require certification that Respondent is aware of and has complied with the requirements of the Conflicts of Interests Rules, including any requirement to file appropriate disclosures with the State of Florida Commission of Ethics prior to submission of a solicitation response.

Solely by way of example, Respondent must disclose in its solicitation response the name of any officer, director, or agent of the Respondent who is also an employee or public officer of Florida Poly, the State of Florida or of any of its agencies. Further, Respondent must disclose in its solicitation response the name of any Florida Poly or State employee or public officer (or his or her spouse or child) who owns, directly or indirectly, an interest of five (5%) or more of the Respondent's company or any of its affiliates or branches.

In addition, in accordance with Section 112.3185, Florida Statutes, by submitting a solicitation response, the Respondent certifies that no individual employed by the Respondent or subcontracted by the Respondent has an immediate relationship to any Florida Poly employee or public officer who was or is directly or indirectly involved in any way in the drafting, evaluating, or awarding of this competitive solicitation.

Failure to disclose the required information or violation of the Conflicts of Interest Rules will be grounds for rejection of Respondent's solicitation response, cancellation of an intent to award, and/or cancellation of any Contract/Lease with the Respondent.

**2.9. Continuation of Performance through Termination.**

The awarded Proposer shall continue to perform, in accordance with the requirements of agreement, up to the date of termination, as directed in the termination notice.

**2.10. Covenant against Commissions, or Brokerage and Contingent Fees.**

By submitting a Proposal, the Proposer warrants that the Proposer has not employed or retained any person or entity, other than a bona fide employee working solely for the Proposer, to solicit or secure any award, agreement, or any other advantage related to this solicitation. By signing an agreement with the University, the awarded respondent warrants that it has not paid or agreed to pay any individual or company (other than a bona fide employee working solely for the awarded respondent), any fee, commission, percentage, gift, or other consideration (contingent fee) upon or resulting from the award or making of the agreement. In the event of the awarded respondent's breach of this warranty, the University has the right to rescind any agreement with the awarded respondent resulting from this solicitation, without liability, and to deduct from any amounts otherwise payable to the awarded respondent under the agreement the full amount of contingent fee(s) and to pursue any other remedy available to the University.

**2.11. Default.**

The University reserves the right to terminate the agreement in whole or in part due to the failure of the awarded Proposer to comply with any term or condition of the agreement, to

acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the agreement. The University shall provide written notice of the termination and the reasons for it to the awarded Proposer. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the awarded Proposer under the agreement shall become the property of and be delivered to the University on demand. The University may, upon termination of the agreement, procure, on terms and in the manner that it deems appropriate, materials, or services to replace those under the agreement. The awarded Proposer shall be liable to the University for any excess cost incurred by the University in re-procuring the materials or services.

**2.12. Defective Tender.**

Every tender of goods must fully comply with all provisions of the agreement as to time of delivery, quantity, and the like. Tender which does not fully conform, may constitute a breach and the awarded respondent may not have the right to substitute a conforming tender.

**2.13. Disposition of Proposals.**

All proposals become the property of the University, and the University has the right to use all ideas, and/or adaptations of those ideas, contained in any proposal received in response to this solicitation. Any parts of a proposal, and any other material(s) submitted to the University with the proposal that are copyrighted or expressly marked as “confidential,” “proprietary,” “trade secret,” or similar marking, (proprietary designation) will be exempt from the public records disclosure requirements of chapter 119, Florida Statutes, only to the extent expressly authorized by Florida law. The mere use of a propriety designation, while necessary, by a supplier does not itself ensure that such materials will be exempt from disclosure. In the absence of a specific Florida statute exempting material from the public records law, the University is legally obligated to produce all public records produced or received in the course of conducting university business, irrespective of any proprietary designation by the supplier. The University, or potentially a court, will make the ultimate determination of whether a supplier’s claim of a proprietary designation will support an exemption from disclosure. The University’s selection or rejection of an offer will not affect this provision.

**2.14. Employment of Unauthorized Aliens.**

Employment of unauthorized aliens is considered a violation of the Immigration and Nationality Act. If the proposer knowingly violates the act, the University may rescind the award or terminate any contract. If any agreement is reached and executed with proposer on or after January 1, 2021, the requirements of section 448.095, Florida Statutes requiring the use of the federal E-Verify system will be obligatory.

**2.15. Equal Opportunity Statement.**

This proposer (and subsequent awarded respondent(s)) and any subcontractors must abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as qualified protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

**2.16. Federal, State, Local Laws, and Regulation.**

The proposer and any subcontractors must comply with all laws, ordinances, and regulations that apply to the University, and any policies regarding sexual harassment, infectious disease transmission and protocols (expressly including but not limited to SARS-CoV-2/COVID19) and smoking on campus. In the event a violation occurs, University reserves the right to rescind the award. If any agreement is reached and executed with proposer on or after January 1, 2021, the requirements of section 448.095, Florida Statutes requiring the use of the federal E-Verify system will be obligatory. The Proposer is solely responsible for keeping itself fully informed of and faithfully observing all laws, ordinances, and regulations and shall protect and indemnify the University, its officers and agents against any claims of liability arising from or based on any violation thereof.

**2.17. Force Majeure.**

In the event compliance with any obligation under this solicitation is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure:" means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order or any other occurrence beyond the reasonable control of the party in question.

**2.18. Gratuities.**

The University may, by written notice to the awarded Proposer, cancel the agreement if it is discovered by the University that gratuities, in the form of entertainment, gifts or other, were offered or given by the awarded Proposer, or any agent or representative of the awarded Proposer, to any officer or employee of the University with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement. In the event the agreement is canceled by the University pursuant to this provision, University shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by awarded Proposer in providing such gratuities.

**2.19. Indemnification/Hold Harmless.**

The Proposer shall indemnify, defend, and hold harmless the Board of Trustees, Florida Polytechnic University, the State of Florida and the Florida Board of Governors, and their officers, agents, and employees from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Proposer, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Agreement.

The Proposer's obligation under this provision shall not extend to any liability caused by the sole negligence of the Florida Polytechnic University, or its officers, agents, and employees. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by the Proposer and third-party infringement under the Agreement.

**2.20. Insolvency.**

The University shall have the right to terminate the agreement at any time in the event awarded Proposer files a petition in bankruptcy; or is adjudicated bankrupt; or if a petition in bankruptcy is filed against awarded Proposer and not discharged within 30 days; or if awarded Proposer becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for awarded Proposer or its business.

**2.21. Inspection and Audit.**

All books, accounts, reports, files, and other records relating to an agreement will be subject at all reasonable times to inspection and audit by the University or other relevant state entities.

**2.22. Labor Disputes.**

A Proposer shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance of the agreement.

**2.23. Lack of Funds.**

The agreement may be canceled without further obligation on the part of the Florida Polytechnic University in the event that sufficient appropriated funding is unavailable to assure full performance of the terms. The awarded Proposer shall be notified in writing of such non-appropriation as soon as reasonably possible. No penalty shall accrue to the University in the event this cancellation provision is exercised. This cancellation provision shall not be construed so as to permit the University to terminate the agreement in order to acquire similar equipment, material, supplies or services from another party.

**2.24. Prior Course of Dealings.**

No trade usage, prior course of dealings, or course of performance under other agreements shall be a part of any agreement resulting from this ITN; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of such resulting agreement.

**2.25. Public Records Laws; Trade Secret Certification.**

As a public body corporate of the State of the Florida, Florida Poly is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. This competitive solicitation is a public record. Any documents Respondent submits to Florida Poly in response to this competitive solicitation will also become a public record, which will similarly be subject to the Florida Public Records Law. As required by law, Florida Poly will respond to public records requests without providing Respondents whose documents have been requested any notice.

Should Respondents seek to assert trade secret protection for any document the Respondent submits in response to this competitive solicitation under Florida Statutes Section 688.002(4), Section 812.081(1)(c), Section 815.04(3), and/or Section 815.045, for each document that trade secret protection is claimed, Respondent must comply with both of the following:

1. Segregate and separately label the document(s) claimed as trade secrets: documents produced electronically should be produced on separate CD or electronic media clearly-labeled "Trade Secret" on the physical media as well in the title of the electronic folder or file; documents produced in hard copy should be separated and each clearly labeled "Trade Secret." Inserting the words "Confidential" and/or "Proprietary" to the front of or the footer of a document does not automatically entitle

- the document to be a trade secret under Florida law and thus is insufficient to comply with this requirement; and
2. Provide a sworn affidavit (form is Attachment A) signed by a high-level officer of the Respondent to Florida Poly's Procurement Department, certifying the following for each separate claimed trade secret document:
    - a. Identify with specificity the document(s) for which trade secrets protection is claimed;
    - b. Provide a description of the document sufficient to determine the application of the trade secret exemption; and
    - c. Explain in detail the specific element(s) or provision(s) of Florida Statutes Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records under applicable Florida law.
  3. A Respondent's failure to fully comply with the above and/or submit a sworn affidavit with its solicitation response is an affirmation acknowledgement by such Respondent that none of its documents are trade secrets.
  4. If a Respondent properly complies and submits a sworn affidavit with its Solicitation Response and Florida Poly later receives a public records request for a document or information that is marked and certified with an affidavit to be a trade secret, we will provide the requestor a copy of the Respondent's sworn affidavit. Any challenge to the affidavit and the application of the trade secret exemption will be rebutted, if at all, only by the Respondent; Florida Poly's only obligation will be to provide Respondent notice that such a challenge has been received. The notice will serve as formal notice to the Respondent that such Respondent has thirty (30) calendar days following receipt of such notice from Florida Poly to file an action with a court of competent jurisdiction seeking an order barring public disclosure of the document(s). If Respondent files an action within thirty (30) calendar days after receipt of notice of a challenge to its trade secret certification, Florida Poly will not release the documents at issue pending the outcome of the legal action. The failure to file an action within thirty (30) calendar days constitutes a waiver of any claim of confidentiality, and Florida Poly will release the document as requested.

**2.26. Licensing Requirements.**

To the extent applicable, Respondent will have all appropriate licenses to conduct business in the State of Florida and Polk County at or prior to award of a Contract/Lease resulting from this competitive solicitation; Respondent must provide proof of such to Florida Poly as a condition of award of a Contract/Lease Agreement.

**2.27. Modifications.**

The University can reasonably modify or rescind the solicitation at any time.

**2.28. Payment Card Industry Data Security Standard.**

For e-commerce business and/or credit card transactions, the Proposer agrees to be bound by the requirements and terms of the rules of all applicable payment card associations, as amended from time to time, and be solely responsible for security and maintaining confidentiality of the payment card transactions processed by means of electronic commerce up to the point of receipt of such transactions by the bank. The Proposer is required to be in compliance with the requisites of the SAS 70 and/or payment card industry data security standard and provide written attestation of compliance annually.



**2.29. Parking.**

The Successful Respondent will ensure that all of the Respondent's and Respondent's employees', agents', and subcontractors' vehicles parked on the University premises have proper parking permits. All vehicles must be registered with and have parking permits purchased from Florida Poly's Parking and Transportation Services properly displayed. Respondent and Respondent's employees, agents and subcontractors will observe all parking regulations. The failure to purchase parking permits, properly display them, and otherwise comply with all Florida Poly's parking regulations could result in the ticketing and/or the towing of Respondent's or Respondent's employees', agents' and/or subcontractors' vehicles. For additional parking information, contact Florida Poly's Parking and Transportation at (863) 874-8432.

**2.30. Protection of Property.**

The Proposer shall at all times guard against damage or loss to the property of the University or of others and shall be held responsible for replacing or repairing any such loss or damage. The University may bill the Proposer or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the Proposer or their agents. The Proposer shall provide all barricades and take all necessary precautions to protect University buildings, University premises, students, personnel, and visitors.

**2.31. Public Entity Crimes.**

In accordance with section 287.133(2)(a), Florida Statutes, a Vendor who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal; may not perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, including Florida Poly; and may not transact business with Florida Poly in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date being placed on the convicted vendor list. By submitting a solicitation response, Vendor is certifying that Vendor is not on the convicted vendor list maintained by the Florida Department of Management Services, and Vendor is also certifying that any subcontractor listed in Vendor's solicitation response is not on the convicted vendor list.

**2.32. Referencing of Orders.**

For any order issued resulting from this solicitation, the University, in good faith references this solicitation for pricing, terms and conditions, delivery location, and other particulars. However, in the event the University fails to do so, the University's right to such terms and conditions are not affected, and no liability of any kind or amount will accrue to the University.

**2.33. Remedies and Applicable Law.**

This ITN and resulting contract/lease, if any, and any disputes thereunder will be governed by the laws of the State of Florida and will be deemed to have been executed and entered into in the State of Florida. Any such contract/lease will be construed, performed and enforced in all respects in accordance with the laws and rules of the State of Florida, and any provision in such contract in conflict with Florida law and rules will be void and of no effect. Florida Poly and the Respondent hereby agree that this ITN and resulting contract/lease, if any, will be enforced in the courts of the State of Florida and that venue will always be in Polk County, Florida.

**2.34. Right of Offset.**

The University will be entitled to offset against any amount due the awarded respondent,

any expenses or costs incurred by the University, or damages assessed by the University concerning the awarded respondent's non-conforming performance or failure to perform the agreement, or any other debt owed the University, including **expenses, costs, and damages.**

**2.35. Safety.**

Florida Poly seeks to furnish its students and employees with a place of work and study that is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and one that complies with occupational health and safety standards promulgated under Occupational Safety and Health Act of 1970 (OSH ACT). Therefore, the Successful Respondent is required to comply with the occupational safety and health standards and all rules, regulations and orders issued pursuant to the OSH ACT while on the University's premises. Florida Poly has not found and is not aware of any hazardous materials on the site; however, Florida Poly recommends Successful Respondent perform an environmental assessment prior to the pre-development phase of the project to investigate subsurface soil conditions in order to ascertain if any hazardous materials may exist. Florida Poly will make available any of its geotechnical engineering reports upon request. Florida Poly accepts no liability for any hazards on the land; Successful Respondent accepts all risks.

**2.36. Sales and Use Tax.**

The State of Florida and its agencies (including the University) are tax-immune and exempt from the payment of taxes. The awarded respondent will be responsible to pay any such taxes imposed on taxable activities/services under the contract/lease, if any, resulting from this solicitation.

**2.37. Software Warranty and Back up.**

If Successful Respondent is providing software to Florida Poly, Respondent warrants that:

1. the media on which the product software is distributed is free from defects in materials and workmanship, and
2. the product performs the functions described in the documentation for the product.

In addition, Florida Poly may create and retain a copy of the software and related documentation for back up and disaster recovery purposes and for archival purposes. This provision will survive termination or expiration of the Contract/lease.

**2.38. Subcontractors.**

If Respondent contemplates the use of subcontractors, as a further condition of award of a contract/lease, the Respondent must certify in writing that all of its subcontractors are appropriately licensed and are registered with the State of Florida in accordance with Florida Statutes Chapters 607 or 620, and such statement will include any subcontractors' corporate charter numbers. For additional information on registering, respondent(s) should contact the Florida Poly Procurement Department.

The Successful Respondent is fully responsible for all work performed under the Contract/lease resulting from this competitive solicitation. The Successful Respondent may, with the prior written consent of Florida Poly, as applicable, enter into written subcontract(s) for performance of certain of its functions under such Contract/lease, subject to the terms and provisions of the Contract/lease. The subcontractors and the amount of the subcontracts will be identified in the Respondent's solicitation response. Respondent's subcontracts will not be implemented or effective until and unless approved

in writing by Florida Poly, as applicable. No subcontract which the Respondent enters into related to the contract/lease will in any way relieve the Respondent of any responsibility for performance of its duties under the contract/lease. Respondent will fully notify any subcontractors of Respondent's responsibilities pursuant to the Contract/lease in Respondent's subcontract(s) with a subcontractor(s) for work related to this competitive solicitation. Respondent is solely responsible for all payments to its subcontractors.

Respondent will require all of its subcontractors to provide aforementioned insurance coverage as well as any other coverage that the Respondent may consider necessary, and any deficiency in coverage or policy limits of said subcontractor will be the sole responsibility of the Respondent.

**2.39. Suspension or Debarment.**

The University may by written notice to the awarded Proposer immediately terminate the agreement if the University determines that the awarded Proposer has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor respondent of any public procurement unit or other governmental body.

**2.40. Term of Ground Lease.**

*Based on negotiations between University and awarded Respondent.*

**2.41. Termination for Convenience.**

The University reserves the right to terminate the agreement in whole or part at any time when in the best interests of the University without penalty or cause. Upon receipt of the written notice, the awarded Proposer shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. In the event of termination under this provision, all documents, data and reports prepared by the awarded Proposer under the agreement shall become the property of and delivered to the University. The awarded Proposer shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of termination. Such compensation shall be the awarded Proposer's sole remedy against the University in the event of termination under this provision.

**2.42. Waiver of Rights and Breaches.**

No right conferred on the University by this solicitation or resulting agreement, if any, will be deemed waived and no breach of any such agreement excused, unless such waiver of right or excuse of breach is in writing and signed by the University. The University's waiver of a right or breach does not constitute a waiver or excuse of any other right or breach.

**2.43. Warranties.**

In addition to any implied warranties, the awarded Proposer warrants that the goods furnished will conform to the specs, drawings and descriptions listed herein and to the sample or samples furnished by the awarded Proposer.