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**Entity Name:** University of Tennessee  
**Event Number:** 10686  
**Event ID:** 10686 - Daniel RFQ  
**Event Name:** UTHSC 3896708 Criticool Control Unit RFQ  
**Requested By:** Donna Daniel  
**Created By:** Donna Daniel  
**Due By Date:** 04/09/2024 03:30 PM Eastern Time  
**Effective Start Date:**  
**Effective End Date:**  
**Q&A Cutoff Date:** 04/03/2024 4:00 PM Eastern Time  
**Invitation Type:** Open Invitation  
**Assigned Commodities:** none  
**Allow Supplier Terms and Conditions:** No  
**Public Responses:** No  
**Display Awardee:** Hide  
**Posting Board Status:** Published  
**Event Status:** No Award

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**Section #: Name:**

**1 Section 1 - Purpose, Background, and Scope**

**1. Purpose, Background, and Scope:**

A. Purpose: 1. : The University of Tennessee Health Science Center (UTHSC) is looking to purchase a Criticool System Unit, 115V with complete accessories for the Department of Obstetrics & Gynecology.

B. Background:

- i. The University of Tennessee is an instrumentality of the state of Tennessee. Accordingly, state law requires the University to bid most of its purchases.
- ii. This Request for Quotations ("RFQ") is a formal solicitation through which the University seeks competitive bids.
- iii. The bid process is an opportunity for the University to acquire items through a public, competitive process. This solicitation is a request for Respondents to make an offer.
- iv. Respondents must submit their respective bid responses in accordance with this solicitation's terms.
- v. The University will intends to select one or more Respondents with whom the University will enter into an agreement.

C. Scope:

- i. Expanded Scope: The University may negotiate with the successful Respondent to add additional goods or services.
- ii. Duration: This is a one time purchase.

**2. Communications:**

A. General requirements: Respondents may only communicate with the Solicitation Coordinator, or another team member in the University's Office of Procurement Services. Respondents must not communicate with any other University employee. If Respondent contacts anyone except the University's Solicitation Coordinator (or another Office of Procurement Services team member), the Director or Associate Director of Procurement Services may disqualify the Respondent.

B. Solicitation Coordinator: Regarding the subject matter of this solicitation, Respondents must only communicate with the Solicitation Coordinator listed in the "contact me" letter.

**3. Qualifications:**

A. Mandatory:

- i. Insurance Requirements - N/A
- ii. Special Delivery Requirements

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iii. Cost Disclosure Form: Respondent must complete the cost disclosure form and submit with its response.

iv. **Shipping Form**: Respondent must complete the shipping form and submit with its response.

B. **Preferred**:

4. **Schedule**:

A. **Publication date: 3/26/2024**

B. **Deadline for questions: 4/3/2024 @ 4:00 PM CST**

C. **Response deadline: 4/9/2024 @ 2:30 PM CST**

5. **Cooperative Purchasing**:

A. The University of Tennessee intends to promote efficient and effective procurement practices. Accordingly, any government agency in the United States (including public colleges or universities) may utilize any procurement agreement that results from this solicitation.

B. The University offers cooperative purchasing as a convenience to other government agencies, and Respondents acknowledge that the University makes no representations as to potential sales volume related to third-party utilization of any resulting agreement.

6. **Number of Awards**: **1**

7. **Attachments**: Respondent must complete and attach all documents included in this solicitation. Documents must be attached in Section 2.

Event Attachments:      Cost Disclosure Form  
                                 Shipping Information Form

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## 2 Section 2 - 3896708-Event Section 2

Please see file Event 10686 - Daniel RFQ - Line Item List.xlsx

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## Terms and Conditions

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### ESM Sourcing Terms

None

### General Terms and Conditions

#### The University of Tennessee Purchasing Terms and Conditions

Version 4.3

### TERMS THAT GOVERN THE BID SOLICITATION PROCESS

By submitting a bid, the respondent agrees to the following terms and conditions that govern the bid solicitation process:

1. Submitting Bids: All respondents must submit their responses electronically, unless the University specifies otherwise. It is the respondent's responsibility to ensure that its bid is submitted in the University's electronic software purchasing system before the applicable deadline.

Assistance for submitting bids can be obtained through our third party provider ESM Solutions' Customer Support at 1-877-969-7246 or at [info@esmsolutions.com](mailto:info@esmsolutions.com) during normal business hours. It is the respondent's responsibility to learn how to use the system. Respondents must submit all applicable and required documents with their bid. A respondent may not submit additional or supplemental documents or amend its bid after the bid deadline. Also, bids not received by the University in the manner specified and by the time specified will not be considered.

2. Bid Preparation Costs: The University will not pay any costs in the preparation or submission of a bid. Respondent is responsible for its preparation costs.

3. Assistance to Respondents with a Disability: In the event that a respondent has a disability, the University will make reasonable accommodation to allow them to participate, provided that the individual requesting assistance contacts the Solicitation Coordinator no later than 10 days before the response deadline.

4. Questions/Interpretations: If any respondents find discrepancies in, or omissions from, the University's solicitation documents, or be in doubt as to their meaning, the respondent must notify Procurement Services in writing (email is acceptable) no later than 5 business days prior to the bid response deadline. Procurement Services will reply to respondent's inquiries via written addendum and will publish this addendum with the bid documents to all prospective bidders, unless Procurement Services exercises its discretion to reply only to the respondent. It is the respondent's responsibility to ensure that Procurement Services has received respondent's questions, and to check the electronic bidding system to see if Procurement Services has issued any amendments or addenda.

5. **Time of Acceptance:** If a respondent fails to state a time within which a bid must be accepted, respondent acknowledges that its proposal shall remain valid for 120 calendar-days beyond the bid opening date, or until 30 days after the date that any protest is resolved, whichever is longer, and the University may accept the proposal at any time within that time period.
6. **Authority to Bind:** Respondent's representative states that they have authority to respond to the University's bid on behalf of respondent.
7. **Confidentiality:** The University will not sign non-disclosure or confidentiality agreements related to respondent's response to any bid. Tennessee law limits the University's ability to withhold records from public disclosure. Respondents should assume that all documentation, including pricing, submitted to the University will be subject to public disclosure. The University hereby notifies all respondents that placing confidentiality notices on documents submitted to the University does not make the documents confidential under Tennessee law. The University will not be bound by such notices. Moreover, the University will not agree to provide advanced notice of any public disclosure or agree to assist the respondent to limit disclosure.
8. **Brand Names/Alternative Products:** Unless specified "No Substitutes," any catalog brand name or manufacturer's reference used in the bid is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than the referenced specifications the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustration and complete description of the products offered. If the respondent fails to submit the required documentation, the bid may be rejected. The University may determine whether a substitute offered is equivalent to and meets the standards of the item specified. The University may require the respondent to supply additional descriptive material. The respondent guarantees that the product offered will meet or exceed specifications identified in the bid invitation. If the respondent takes no exception to the specifications or referenced data in the bid, respondent will be required to furnish the product according to the brand, names, numbers, etc., as specified in the invitation for bid document.
9. **Tax Exemption:** The University is exempt from federal excise taxes and from state sales taxes on purchases of tangible personal property. Copies of the appropriate exemption documentation will be provided upon request and these taxes should not be included in the respondent's bid prices.
10. **Indemnification:** Respondent shall hold and save the University, its trustees, officers, agents, and employees harmless from any claims, damages and actions of any nature arising from respondent's bid or arising from the use of any materials, goods or services furnished by the respondent, provided that such liability is not attributable to negligence on the part of the user or failure of the user to use the item in the manner outlined by the respondent in descriptive literature or specification submitted with the respondent's bid. Respondent's indemnification obligation shall include, but not be limited to, any claim of patent, copyright, or other intellectual property infringement asserted against the University based upon respondent's bid or any materials, goods or services furnished by the respondent.
11. **University's Liability:** The University's liability shall be governed by the Tennessee Claims Commission Act. The University will not enter into any agreement which contains a clause requiring the University to indemnify, hold harmless, or defend any party. Also, the University will not enter into any agreement which contains a clause limiting its remedies against any party.
12. **Authorized Dealer:** Respondent must be an authorized dealer of any goods or services sold to the University. If requested, the respondent must provide an authorization letter from the original equipment manufacturer. Failure to do so may result in the bid being disqualified or the award being canceled.
13. **Sales Data:** Upon request, the respondent agrees to furnish the University a summary of sales made under the agreement. This data may include: delivery date, department name, invoice date, invoice number, item description, list price, method of payment, net price, order date, order method, quote number and manufacturer part number. The University may terminate the award if this information is not provided in a reasonable time period.
14. **Irrevocable Waiver:** By responding to the solicitation, respondent hereby irrevocably waives any claims against the University's trustees, officers, employees and former employees. Respondent also agrees not to sue University employees in their individual capacity. This waiver applies to respondent and their successors, heirs and assigns. The University and the respondent state that this clause is material to this bid.
15. **Collusion, Conflict of Interest and Debarment:** When submitting a bid, the respondent certifies the following:
- The respondent prepared and arrived at its bid independently and there was not any collusion between respondents. The respondent agrees not to discuss or reveal its bid to anyone until after the award is made.
  - No funds resulting from this award will be paid either directly or indirectly to any University employees, their spouses or dependent children. This prohibition applies for up to six months after they terminate their employment with the University.
  - All potential conflicts of interests will be disclosed in the bid response including if any owners of respondent are related to any University employee, their spouse, or dependent children.
  - The respondent is not presently debarred, proposed to be debarred, suspended, or declared ineligible for covered transactions by any federal agency or department.
- If the University determines that the respondent failed to disclose or incorrectly disclosed information related to any of the four statements listed above, the University may consider any such actions to be grounds for response rejection or award termination, regardless of the time of detection.
16. **Equipment:** Unless the University states otherwise in its specifications, all bidders must quote prices for new equipment. If a Respondent fails to quote prices for new equipment and the University accepts the order, Respondent will be liable for providing the University with new equipment at no extra costs to the University. If the University's specifications allow for used equipment, Respondent must list the equipment's date of manufacture, number of previous owners, condition, maintenance and repair history, and any other relevant information. University may inspect any used equipment before purchasing the used equipment.

## **TERMS THAT GOVERN THE BID EVALUATION PROCESS**

By submitting a bid, the respondent agrees to the following terms and conditions that govern the University's evaluation of respondents' bids:

- Acceptance and Rejection of Bids:** The University may accept or reject any bids when, in its opinion, such action is in the best interests of the University. In such circumstances, the University may re-solicit bids or to continue with the current supplier for these services. The University may also waive minor variances or immaterial defects in a response. The University may also accept any item in the bid, unless otherwise specified by the Respondent.

2. Discretion: All decisions regarding a bid, including the award, are within the University's sole discretion. The University may award to respondent other than the highest scoring or lowest costs. For clarity, as used in these Purchasing Terms and Conditions the word "may" means "sole discretion."

3. Award: This solicitation does not commit the university to make an award or to procure or contract for the goods or services described in this solicitation. The University reserves the right to negotiate terms and alter the specifications with the with the lowest cost respondent or highest point scoring respondent, however, if the University and respondent are unable to reach mutually agreeable terms and conditions, the University reserves the right to reject the bid and negotiate terms of an agreement with the next low cost respondent or next highest point scoring respondent. If the agreement with the successful respondent is terminated for any reason prior to the agreement termination date, the University may elect to substitute the next lowest cost respondent or the next highest point scoring respondent, if they are willing to honor the prices in their initial proposal. A Purchasing Department of the University of Tennessee is the only office authorized to award a purchase order or contract for the required services.

4. Multiple Awards: The University may award this solicitation to multiple respondents.

5. Inspection of the Bid File: The bid file becomes public record after the issuance of the intent to award.

6. Protest Procedure: Any respondent wishing to protest a decision must do so in accordance with the University's procurement policy ([http://policy.tennessee.edu/fiscal\\_policy/fi0405/](http://policy.tennessee.edu/fiscal_policy/fi0405/)). The parties shall make reasonable efforts to resolve any dispute before filing any formal legal action.

## **TERMS THAT GOVERN THE AWARD**

The terms below govern any purchase order that the University issues, unless the University includes different terms with its purchase order. The terms attached to any University purchase order entirely replace the terms below.

1. Additional Goods or Services: The parties may mutually agree to add additional goods or services from Supplier

2. Termination:

a. For Cause: If Supplier materially breaches this agreement, University may terminate this agreement immediately.

b. Unrestricted Right: Either party may terminate this agreement for any reason by giving the other party at least 30 days' prior notice.

c. Work: If University terminates this agreement, upon receipt of University's notice of termination, Supplier shall immediately stop all work under this agreement.

3. Delivery:

a. Title: The University takes title to the goods upon University's physical receipt of goods.

b. Damages: Supplier is responsible for all damages that occur during shipment, regardless of cause, until the University takes title to the goods. The University may inspect the goods at any time from the point that University takes title to 4 business days later. Within the 4 business day period, the University may reject any goods without penalty by providing Supplier notice.

4. Payment:

a. Invoicing: Unless stated otherwise, the University initiates payment for materials or services upon receipt of all goods and services and receipt of an original, itemized invoice that reflects accurate contract prices. Invoices failing to itemize the order, reference the purchase order, or are undated may cause a delay in payment or rejection of the invoice.

b. Late Payment: University's payment will not be considered late unless University pays later than 45 calendar days after receiving Supplier's invoice.

5. Non-Exclusivity: The University will promote the use of any established agreement; however, the University does not guarantee that all purchases for the products and/or services available under any award will be made exclusively from the supplier. Also, an award does not obligate the University to make any purchases from the awarded respondent and the University may elect to award contracts or purchase orders for like products or services to multiple suppliers.

6. Assignment: This agreement is personal to Supplier. Accordingly, Supplier may not assign any rights or delegate any duties under this agreement.

7. Records; Audit:

a. Records: Supplier shall maintain records for all expenses for which Supplier invoices the University under this agreement. Supplier shall maintain its records for at least 5 years and shall maintain its records in accordance with generally accepted accounting principles.

b. Audit: During the term of this agreement and for 5 years after the last payment from the University to Supplier under this agreement, the State of Tennessee Comptroller or the University's internal audit, or both, may audit Supplier's records that relate to this agreement.

c. Assistance: Supplier shall provide the University with any documentation, access to information, or other assistance necessary for the University to ensure that Supplier complies with its obligations under this agreement.

8. PaymentWorks: Supplier must register as a vendor with the University's vendor management system, PaymentWorks.

9. Supplier Adherence to Agreement: Supplier may only sell goods or services listed in the University's purchase order. If respondent sells items not listed in the University's purchase order, the University may terminate the purchase order immediately and without advanced notice.

10. No Third-Party Beneficiaries: There are no third-party beneficiaries to this agreement.

11. Iran Divestment Act: The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, are a material provision of this agreement. Supplier hereby certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

12. Anti-Israel Boycott: In compliance with Senate Bill 1993 which amends Title 12, Chapter 4, Part 1 to add that Supplier hereby states that it is not currently engaged in and will not for the duration of this agreement engage in, a boycott of Israel.

12. **Illegal Immigrants:** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Supplier hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.

13. **Tennessee Department of Revenue:** In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Supplier hereby attests that it has registered with the State of Tennessee's Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.

14. **Governing Law:** The laws of the state of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement. The University's liability will be governed by the Tennessee Claims Commission Act.

15. **Self-Insurance:** The University is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq., which covers certain tort liability for actual damages of up to \$300,000 per claimant and \$1,000,000 per occurrence.

16. **Severability:** The parties intend as follows:

a. that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;

b. that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of the agreement will remain in effect as written; and

c. that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

17. **No Automatic Renewal:** Any terms included in Supplier's documentation that attempt to renew the agreement automatically do not apply to the University.

18. **Force Majeure:** Neither party's delay or failure to perform any provision of this agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) will be deemed a breach of this agreement.

19. **Use of University Intellectual Property:** Except as allowed in this section, Supplier shall not use the University's name, marks, logos, or any other University-owned intellectual property for any reason, without the written consent of an authorized official of the University. During the term of this agreement, Supplier may list the University's name in Supplier's list of clients.

20. **Modification; Waiver:**

a. **Modification:**

i. No amendment of an agreement will be effective unless: (1) it is in writing; (2) it is signed by authorized officials of both parties; and (3) it specifically references this agreement.

ii. Only the University's authorized officials have the authority to bind the University.

b. **Waiver:** No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties. In the event that Supplier maintains terms and conditions on its website, software, invoices, etc., such terms and conditions do not apply to the University.

22. **Debarment:** Supplier hereby attests that the following are true statements:

a. Supplier is not currently debarred by the U.S. federal government.

b. Supplier is not currently suspended by the U.S. federal government.

c. Supplier is not currently named as an "excluded" supplier by the U.S. federal government

d. Supplier must notify University within 2 business days if Supplier is debarred by any organization in the United States

23. **Fraudulent Orders:** Supplier is solely responsible for ensuring that Supplier fulfills only legitimate orders. The University is not responsible for any fraudulent orders (for purposes of this agreement, "fraudulent orders" means any order that is not: (a) made by the University, or (b) for the University's official use.

24. **Compliance:**

a. **Conflicts of Interest:**

i. Supplier states that no part of the Supplier's compensation will be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Supplier in connection with any work contemplated or performed under this Agreement.

ii. Supplier states that this Agreement is immediately void if the Supplier is, or within the past 6 months has been, an employee of the State of Tennessee or if the Supplier is an entity in which a controlling interest is held by an individual who is, or within the past 6 months has been, an employee of the State of Tennessee.

25. **Background Checks, Premise Rules and Conduct:**

a. **Background Checks:**

i. **General Obligation:** Supplier will not knowingly assign any individual to provide services to University if the individual has a history of criminal conduct. For purposes of this agreement, "criminal conduct" means (a) that the person is listed on any state's sexual offender registry; (b) that person is listed on the Tennessee Abuse Registry, or (c) that the person has been convicted of a felony in any state.

ii. **Prompt Background Checks:** If the University requests, Supplier must perform a comprehensive criminal background check on any Supplier employee or sub-contractor.

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b. Premises Rules: When Supplier is physically present on University property, Supplier shall make reasonable efforts to cause its employees and permitted sub-contractors to become aware of, and act in full compliance with, University's rules, policies, and procedures (collectively referred to as "rules."). For example, Supplier shall ensure that it complies with the University's applicable rules regarding safety, smoking, noise, access restrictions, parking, security, and consideration for minors (students and University visitors under age 18).

c. Conduct: Supplier will make reasonable efforts to ensure that Supplier's employees and sub-contractors will conduct themselves in a professional manner while on University property, and while interacting with University employees, students, or visitors. Supplier must report, within 24 hours, to the University's Office of Procurement Services any complaints about Supplier's employees or sub-contractors engaging in the following behavior: sexually suggestive or harassing behavior; unwanted physical touching; unwanted photographs; alcohol use; illegal drug use; or physical manifestations of alcohol or drug use (e.g. Supplier's employee emits smells that indicate that the individual consumed alcohol recently).

**Event Specific Terms and Conditions**

None