



# **REQUEST FOR PROPOSAL**

**RFP #B0007501**

## **Campus Pouring and Vending Rights**

Administrators:

Bob Ritenbaugh

Bryan Cotney

Jon G. Waggoner

ISSUE DATE: August 21, 2015

**PROPOSAL DUE DATE AND TIME:  
BEFORE 10:30 AM, CST, September 23, 2015**

**NO LATE PROPOSALS WILL BE ACCEPTED**

**RFP SUBMITTAL LOCATION**

Missy C. Kennedy  
Auburn University  
Procurement and Payment Services  
311 Ingram Hall  
Auburn, Alabama 36849  
Phone: (334) 844-7771  
Email [kennem1@auburn.edu](mailto:kennem1@auburn.edu)

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## SCHEDULE OF EVENTS



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RFP Released .....	Friday, August 21, 2015
Pre-Proposal Telephone Conference .....	1:30 PM, CST, August 28, 2015
Call In Number: 1-800-446-0389	
Deadline for Requests for Changes/Clarifications .....	5:00 PM, CST, September 3rd, 2015
Proposed Due Date .....	BEFORE 10:30 AM, CST, on September 23, 2015
Proposal Opening .....	10:30 AM, CST, September 23, 2015
Potential Campus Presentation with Select Proposers .....	September 29th, 2015
Negotiating Period with Lead Proposer .....	Through October 14, 2015
Contract Execution .....	October 21, 2015

Note: All dates listed above are anticipated and not fixed. AU may change any dates above, at its sole discretion.

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## INDEX

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Part I - Introduction and General Information .....	Pg. 5
Part II - Auburn University Instructions to Proposers .....	Pg. 6
Part III – General Terms & Conditions of Contract .....	Pg. 10
Part IV - Contract Requirements .....	Pg. 15
Part V - Evaluation Criteria .....	Pg. 19
Part VI - Proposer Certifications .....	Pg. 21

## **PART I - INTRODUCTION AND GENERAL INFORMATION**

Auburn University's current campus-wide Pouring and Vending Rights Contract expires December 31, 2015. It is our intention to execute a new contract on or before October 21, 2015, with a contract term to begin January 1, 2016.

The rights to be negotiated include the pouring and vending rights specified below for the entire campus, specifically excluding Isotonic Sideline Rights for Intercollegiate Athletics.

### **Background:**

Auburn plans to generally continue the philosophy and terms currently contained in our existing Vending and Pouring and Vending Rights Agreement, the term for which ran from 2007 through 2015. The contract to be awarded following this RFP may differ in several respects, depending upon the responses that Auburn receives to this RFP. A proposed form of the to-be-negotiated Pouring and Vending Rights Agreement is attached to this RFP. It should be noted that the final Agreement will supersede any previous drafts of the Agreement and the RFP. Negotiated Exclusivity (as defined below) will only be granted within five (5) discreet categories: Carbonated Soft Drinks, Bottled Water, Isotonics, Energy Drinks, and Vended Snack Items. Beverages and food not subsumed within those categories may be served on Auburn's campus without restriction, and Auburn shall be free to contract for Negotiated Exclusivity outside of the five (5) categories at any point in the future. The successful Contractor, in each of the five (5) categories, shall pay a pouring and vending rights fee and, if applicable, a signing bonus to Auburn University and shall enter into an advertising agreement, subject to review and approval with Auburn's Athletics multi-media provider. It is expected that the total annual remuneration to the University under the new contract will be significantly greater than the current amounts, given increases in enrollment, recent success of the University nationally, the longer term in the new contract, and the length of time since the last contract execution.

### **Auburn University's Goals:**

Auburn University is seeking to maximize the financial and experiential return to the institution for value in product sales, marketing exposure, and affinity with a major university, operating as a member of the prestigious Southeastern Conference. We expect that this value will be expressed in various ways within the specific categories of (1) carbonated soft drinks, (2) bottled water, (3) Istonics, (4) Energy Drinks, and (5) Vended Snack Items. Remuneration and benefits which may be proposed to University may include signing bonus (if desired); pouring rights fees; competitive consumer product pricing; advertising buy with Auburn's media rights provider (strongly encouraged); creativity in marketing; plan to incrementally increase Beverage sales each year; annual amount of complimentary Beverage support and pricing for additionally purchased product; excellent service and equipment support with the most energy efficient, convenient, and technologically advanced equipment available; products, equipment, and services that contribute to Auburn's energy efficiency, waste reduction, and other sustainability efforts; and other logistical support necessary to serve the institution's high volume periods. Auburn University will enter into contracts that serve to maximize these goals whether it be with one Contractor offering the best complete package and benefits for Negotiated Exclusivity, or with several Contractors, each with Negotiated Exclusivity in one or more of the categories above. For clarification, one vendor might be selected for one or more of the five (5) categories above, while another vendor may be selected for the remainder.

### Auburn University's Commitments:

It is Auburn University's objective to enter into a mutually beneficial relationship with a Contractor or Contractors to provide the products and services specified hereunder. In return, Auburn University will negotiate to provide a or the successful Proposer(s) with the following:

- Venues to sell a substantial amount of the Beverages and Vended Snacks.
- The ability to increase brand awareness and loyalty to the Contractor's identified target audience.
- An opportunity for the Contractor to enhance its image as a positive corporate citizen through a program that will generate positive public relations as well as significant community goodwill.

Additional information about Auburn University is included on Exhibit A to this RFP.

## **PART II – AUBURN UNIVERSITY INSTRUCTIONS TO PROPOSERS**

All proposals are subject to the provisions and requirements of the laws and regulations of the State of Alabama.

**Right to Reject:** Auburn University reserves the right, in its sole discretion, to reject any or all proposals received as a result of this Request for Proposal (RFP).

**Questions and Request For Clarification/Change:** All clarifications or requests for change regarding technical information, procedural or contractual requirements, or other issues must be submitted, in writing, no later than the date and time listed in the Schedule of Events to the name and address listed below in "Submittal Location." No information obtained in any conversation with any Auburn University personnel will serve to change the requirements and/or scope of the RFP.

If any Proposer has an exception or a concern with anything in this RFP, including any of the proposed Contract terms and conditions included within this RFP or as codified in the attached Form of Pouring and Vending Rights Agreement (attached hereto as Exhibit B), it is important to raise that issue, in writing, by the deadline date for Request for Changes/Clarifications, listed in the Schedule of Events. By doing so, each Proposer shall afford itself with the maximum opportunity to discuss and potentially alter that language. Any change made by Auburn University in response to a Request for Changes/Clarifications shall be communicated to all parties who receive this RFP, shall be posted on the University's Procurement and Payment Services bid calendar website at [http://www.auburn.edu/administration/business\\_office/pps/bid-calendar.html](http://www.auburn.edu/administration/business_office/pps/bid-calendar.html) (under the opening date), and shall not extend the Proposal Due Date as listed in the Schedule of Events unless specifically noted in the Change or Clarification.

The purpose of the Request for Changes/Clarifications is to permit Auburn University to correct, prior to the opening of proposals, technical or contractual requirements that may be unlawful, improvident, or which unjustifiably may restrict competition. This will allow Auburn University to make needed corrections through the issuance of an addendum, prior to the Proposal Due Date. It will also help eliminate the waste of time which is inherent in protests and in the possible rejection of all proposals.

Envelopes containing Requests for Changes/Clarifications shall be clearly marked as such and shall concisely and descriptively explain the requested change or clarification.

Submittal Location: Requests submitted to other than the persons listed below may not be considered. Auburn University shall not be held responsible for any requests for change submitted after the due date and time. Requests for change may be submitted via facsimile. Submit requests for change or clarification to:

Missty C. Kennedy, Assistant Director of Procurement  
Auburn University  
Procurement and Payment Services  
311 Ingram Hall  
Auburn, Alabama 36849  
Voice: (334) 844-7771  
kennem1@auburn.edu

Copy to: Jon G. Waggoner  
University Counsel  
Auburn University  
101 Samford Hall  
Auburn, Alabama 36849-5113  
Voice: (334) 844-7100 Fax: (334) 844-4575  
[Waggoner@auburn.edu](mailto:Waggoner@auburn.edu)

Change or Modification/Addenda: Any change or modification to the specifications or the procurement process will be in the form of an addendum to the RFP and will be made available to Proposers. Only documents issued as addendums by Auburn University shall change the RFP in any way. Note: Individuals or entities who receive an RFP should consult the Auburn University Procurement and Payment Services website at [http://www.auburn.edu/administration/business\\_office/pps/bid-calendar.html](http://www.auburn.edu/administration/business_office/pps/bid-calendar.html) to assure that no additional addendum announcements have been issued. Proposers are responsible for incorporating all addenda and changes into their final proposal. Failure to do so may, in effect, make the Proposer's proposal non-responsive, which could cause the Proposer's proposal to be rejected.

Pre-Proposal Conference Call: A pre-proposal conference call has been scheduled (See Schedule of Events and the AU Procurement and Payment Services website for date, time, and location). This is a conference call; however, interested Proposers are strongly encouraged to participate. The conference call will be held to explain the RFP requirements and answer general questions. Suggested changes/modifications to the RFP requirements and criteria may be made on the pre-proposal conference call, although decisions to make any change or modifications will be made at a later date and will be published on the AU Procurement and Payment Services website.

Information Provided by Auburn University: Auburn University is providing information in this RFP relating to Auburn University, its objectives, current Beverage and vending operations, and University demographics. Auburn University may supplement this RFP with additional information during the RFP process.

Auburn University assumes no responsibility or liability for the adequacy, accuracy, or completeness of any information provided in this RFP or otherwise, by Auburn University, its agents, employees, or representatives. The Proposer agrees to waive any claim or defense to any claim relating to the

adequacy or sufficiency of any information provided prior to the execution of the Pouring and Vending Rights Agreement.

It is critical that Auburn University receives quality, creative, and comprehensive responses in order to make the best informed decision. Toward that end, through written questions, site visits, and this RFP process, all Proposers are encouraged to ask questions and seek whatever information is necessary to accomplish this goal.

Proposal Preparation and Submission: Responses to the requirements for this RFP shall be of sufficient length and detail to demonstrate that the Proposer has an understanding of the Auburn University environment and the needs of the campus as it relates to the Pouring and Vending Rights Agreement.

Proposers shall submit ONE (1) ORIGINAL AND 5 COPIES of their complete proposal to the location listed in the Schedule of Events on page 2 of this RFP by the time listed in the Schedule of Events. Original shall be marked "ORIGINAL." Original copy shall contain original signatures on any pages where it is requested. Additionally, each Proposers shall submit its complete proposal on compact disk (CD) or electronic flash drive as one file, with all requested changes to the Form of Pouring and Vending Rights Agreement marked in "Tracked Changes." Proposers who fail to submit the requested number of copies may delay the evaluation process by being required to submit additional copies for the evaluation team.

Proposals and pricing shall be signed by an authorized representative of the Proposer. At least one proposal submitted by Proposer should bear an original signature. No oral, telegraphic, telephone, or facsimile proposals will be accepted.

Pages should be numbered consecutively and a set of tabs inserted to identify each section of the proposal, such as: "A.1 Cover Letter", "A.2 Contractual Acceptance", etc. All binders, reference materials, and other documents should be clearly labeled or otherwise identified and referenced in a clear and consistent manner throughout the proposal.

Proposals must be submitted in sealed package(s) or envelope(s). To ensure proper identification and handling, all package(s) or envelope(s) must be clearly marked with the RFP Number and date and time of submission.

Proposals will be received in the AU Procurement and Payment Services office at 311 Ingram Hall, Auburn University, AL until 10:00am CST on September 23, 2015. After 10:00 and until the 10:30am CST bid opening, bids must be hand delivered to 138 S. Gay St. Proposals will be publicly opened at 10:30 am CST on September 23, 2015.

Information Submitted: The Proposer is cautioned that it is the Proposer's sole responsibility to submit information related to the evaluation categories, and that Auburn University is under no obligation to solicit such information if it is not included within the Proposer's proposal. Failure by the Proposer to submit such information may cause an adverse impact on the evaluation of the Proposer's proposal.

Proposers must complete all applicable information and provide all information requested in the RFP. Failure to comply may be grounds for proposal rejection.



Proposer should also name its Contract Administrator by listing the individual's name, title, and phone number, and who is assigned the responsibility of answering questions and resolving problems related to the proposal. The Contract Administrator shall be the predominant party with whom Auburn University will negotiate if such proposer progresses to the negotiation stage.

It is important that each Proposer mark any requested changes which it would like Auburn to consider to the attached Form of Pouring and Vending Rights Agreement. Requested changes that are not submitted pursuant to this process need not be considered by Auburn when the parties prepare the final version of the Contract. If you would like a copy of the agreement in a Word document, please submit an email request to Missty C. Kennedy at [kennem1@auburn.edu](mailto:kennem1@auburn.edu).

**In addition, Proposers must be aware that, with the exception of trade secrets, all information submitted by them in response to this RFP may be subject to open review under Alabama Law.**

RFP Preparation Costs: Auburn University shall not be liable for any costs incurred in the preparation and presentation of proposals.

Alternate Proposals: Proposers may submit more than one (1) proposal. All proposals must comply with the requirements of the RFP except that additional proposals may incorporate, by reference, repetitive information which is provided in the complete proposal. Each should be labeled such as Alternate 1, Alternate 2, etc.

Proposal Opening Procedure: All proposals received in response to this RFP shall be opened at the scheduled time and date. Proposers who attend the opening will be informed only of the names of Proposers submitting proposals. No other information will be available. Proposals will be available for public inspection only after an award has officially been made.

Evaluation of Proposals: Proposals will be evaluated by representatives of Auburn University. The University has the discretion to evaluate the qualitative as well as financial aspects of each proposal and make its selection based on what it considers to be in the best interest of the University as a whole, or to make no contract award at all from this RFP. The award and selection of a provider for Auburn University's Pouring and Vending Rights requirements is solely within the discretion of the University.

The evaluation will determine if the proposal meets the pouring and vending rights needs of Auburn University. The following process will be used:

- A. Proposals will be evaluated for completeness and compliance with the requirements of this RFP. Those proposals that are incomplete or which do not specifically address the requested information may be rejected. Auburn University reserves the right to waive what are, in Auburn University's opinion, minor informalities.
- B. Proposals considered complete will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the proposal is unclear, Proposers may be asked to provide written clarification. Those proposals that do not meet all mandatory requirements will be rejected.
- C. Proposals that meet all requirements will be evaluated on their comprehensive value to Auburn University in meeting its needs. At the option of Auburn University, Proposers may be asked to provide written clarification and/or to provide a presentation to clarify their proposal to aid the University in awarding these rights.

- D. These findings will be used to establish a single “finalist” or subset of "finalists" which will be invited to enter into negotiations with the University to discuss details and finalize requirements/offerings.
- E. Auburn University reserves the right to conduct negotiations with multiple finalists at the same time as well as to terminate negotiations with any of the finalists when Auburn University deems further negotiations to be not in the interest of Auburn University.
- F. Auburn University will negotiate and select for Contract the Proposer or Proposers with the overall best final proposal.

Prior Acceptance of Defective Proposals: Due to limited resources, Auburn University generally will not review or analyze proposals which on their face fail to comply with the requirements of the RFP or which clearly are not the best proposals, nor will Auburn University generally investigate the references or qualifications of those who submit such proposals. Therefore, neither the return of a proposal nor acknowledgment that the selection is complete shall operate as a representation by Auburn University that an unsuccessful proposal was complete, sufficient, or lawful in any respect.

Investigation of References: Auburn University reserves the right to investigate the references and the past performance of any Proposer with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of contractors, subcontractors, and workers. Auburn University may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete its investigation. Auburn University reserves the right to reject any proposal or to reject all proposals at any time prior to Auburn University's execution of a Contract if it is determined to be in the best interest of Auburn University to do so.

Negotiations: Auburn University may enter into negotiations with one or more Proposers concurrently. The resulting Pouring and Vending Rights Agreement shall be based on the submitted proposal and the negotiations concerning the proposal. Should negotiations between Auburn University and any Proposer reach an impasse, Auburn University reserves the right, at its sole discretion, to break off the negotiations.

Post-Selection Review: After completion of negotiations, Auburn University will name an apparent successful Proposer (or Proposers if there are multiple Proposers awarded in various categories). Identification of the "apparent successful Proposer(s)" is procedural only and creates no right in the named Proposer(s) to award of the Contract.

### **PART III -GENERAL TERMS & CONDITIONS OF CONTRACT**

DEFINITIONS (these definitions apply to the entire RFP):

"Annual Business Review" means the minimum annual formal review of the Pouring and Vending Rights Agreement conducted with the Stakeholder Organizations as further described in the RFP and Form of Pouring and Vending Rights Agreement.

"Athletics" means the Department of Intercollegiate Athletics at Auburn University.

“Auxiliary Services” means the division of Auxiliary Services in charge of relating to and managing the primary pouring and vending services provider at Auburn University.

"IMG College" or "IMG" or "Multi-media Rights Provider" means the company that Athletics has contracted with to market multi-media Athletics inventory.

"Beverage" means the specific branded non-alcoholic carbonated and non-carbonated Beverages exactly described (by SKU, description, packaging, size, name, etc.) on Exhibit B of the attached Form of Pouring and Vending Rights Agreement. Products offered by the Contractor not included in the definition of Beverage and Negotiated Exclusivity by specific description will not be included in the Contract unless and until later negotiated through the New Products process described below. Subsumed within the broader definition of "Beverage" are the following subcategories: CSDs, Bottled Water, Isotonics, and Energy Drinks.

"Bottled Water" means all packaged liquids predominantly comprised of water and which are identified as "still," "sparkling," "filtered," "purified," "spring," "artesian," "well," "distilled," "mineral," or "flavored," and which may, without specific limitation, contain nutritive or non-nutritive sweeteners or flavorings, vitamins or minerals. Due to the breadth of this category, AU cautions all Proposers that each SKU associated with this category will be looked at individually and may be deemed, with cause, to fall outside of the definition.

"Campus" means the area inside Auburn University's Main Campus boundaries in Auburn, Alabama, as it now exists or may be amended from time to time during the term of the Contract. It does not include fisheries, agriculture, or extension sites, experiment stations, airport, or AUM. Because Isotonic Sideline Rights are awarded pursuant to a separate process; areas such as player benches, practice facilities, and locker rooms will not be included within the definition of Campus inasmuch as such areas are covered in the Isotonic Sideline Rights contract.

"Contract" means the definitive written agreement between the parties, substantially in the form of the attached Form of Pouring and Vending Rights Agreement, along with any and all Contract amendments, if any.

"Contract Administrator" shall be the first point of contact within each Party organization for issues relating to the Contract. The Contract Administrator shall be, in the case of the University, the Associate Vice President for Auxiliary Services; and in the case of the Proposer, the person named below in the Notices section of the Contract.

"Contractor" means a person or organization with whom Auburn University has contracted for the provision of services and receipt of rights pursuant to the Contract.

"Dining Services" means the primary food services provider at Auburn University.

"Energy Drink" means liquid beverages which contain legal stimulants, vitamins, and minerals, including caffeine, guarana, taurine, various forms of ginseng, maltodextrin, carnitine, creatine, and ginkgo biloba. Some may contain high levels of sugar, or glucose. These drinks are typically marketed towards young people, students, people 'on the go' and those who play sports. Many such beverages are flavored and/or colored to resemble carbonated soft drinks. They are distinguishable from carbonated soft drinks in that they are marketed based upon the fact that they increase the consumer's energy levels.

"Isotonic" means a non-carbonated liquid or substance which has generally the same salt concentration as the normal cells of the body and blood or which can be consumed to replace the fluid and minerals the body loses during a time of physical activity.

"Negotiated Exclusivity" means the range and limited exclusivity, by Beverage and rights granted, as negotiated into the final Contract.

"New Product" means any new product (by name, size, packaging, SKU, initial offering, acquisition, etc.) not listed on Exhibit B of the Form Agreement and subsequently offered by Contractor.

"Auburn University" means the State of Alabama, acting by and through the Auburn Board of Trustees, on behalf of Auburn University.

"Pass-Through Rights" means conveyance of the University's endorsement or intellectual property rights to a third party for commercial or promotional purposes.

"Isotonic Sideline Rights" means the exclusive right to be the Isotonic utilized by Auburn student-athletes and exclusively promoted as the "Official Isotonic of Auburn Athletics" during athletic competition. These rights shall be addressed and rewarded during a separate RFP and negotiation process.

"Pouring and Vending Rights Agreement" means the Contract or Contracts which will result from this RFP and all of its facets, such contract or contracts to be substantially in the form of the attached Beverage and Pouring and Vending Rights Agreement.

"Premium" means any article bearing the University's trademarks given away or sold at less than the usual selling price, for the purpose of increasing the sale of, promoting, or publicizing any other product, or any service, including incentives for sales force, trade or consumer.

"Proposer" means any respondent of record to this RFP. The successful Proposer, following negotiation and Contract execution, becomes the Contractor. Statements referring to or using "Proposer" generally indicate requirements which must be included within the proposal. Statements referring to "Contractor" generally indicate requirements that will become Contractual obligations.

"Proposal" means Proposer's response to the RFP.

"RFP" means Auburn University Request for Proposal numbered **B0007501** for Campus Pouring and Vending Rights.

"Royalty Bearing Packaging and Product Rights" shall mean any product or packaging using the trademarks of the University in such a way that commemorates or celebrates an athletic championship or athletic or university event anniversary or deemed collectible is considered Royalty Bearing. Product or packaging that uses University trademarks to promote information or a program sponsored by the athletic department may not be royalty bearing but should be so presumed unless University agrees in writing that such product is not royalty bearing.

"Stakeholder" or "Stakeholder Organization" means any combination of Dining Services, Auxiliary Services, Athletics, or other University constituent organization.

"Housing Department" means the Department of Housing and Residence Life at Auburn University.

ACCESS TO RECORDS: Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of the Contract. The Auburn University Board of Trustees, State of Alabama, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transcripts.

Such books and records shall be maintained by Contractor for three (3) years from the date of Contract expiration unless a shorter period is authorized in writing. Contractor shall be responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by Auburn University.

AWARD: Auburn University will seek to award Contract(s) from this RFP in the manner that maximizes the benefits Auburn University can receive. Auburn University expects to review proposals by category of beverage and thus award of Contracts may result in different contracts for different segments (carbonated soft drinks, bottled water, Isotonics, Energy Drinks, Vended Snacks, etc.). Auburn University reserves the right to have differing levels of negotiated exclusivity for different contract awards if the Contract(s) so specify.

COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under the Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act, 42 USC §12100 et seq., and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of the Contract.

COMPLIANCE WITH SPORTS ORGANIZATIONS RULES: Contractor shall not take any action or enter into any agreements related to the Contract which would violate any rules or regulations of the SEC, NCAA, and any other applicable governing sports organizations.

EMPLOYEES: The Contractor shall employ only competent and satisfactory personnel and shall provide a sufficient number of employees to perform the required services efficiently and in a manner satisfactory to Auburn University. If a University Contract Administrator or designee notifies the Contractor in writing that any person employed on the Contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall not again be employed in the execution of the Contract without the written consent of the University. Employees handling cash shall be sufficiently bonded to cover potential theft. Contractor's employees shall be suitable by training, appearance, and habits for working on University premises. They are to be clearly identified by appropriate uniform or other markings on their person that would identify them as Contractor employees. Vehicles used by Contractor for the delivery of product or completion of service on Campus must be clearly identifiable as those of Contractor.

FORCE MAJEURE: Neither Auburn University nor Contractor shall be held responsible for delay or default caused by fire, riot, act of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, Auburn University's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the RFP.

GOVERNING LAW: This RFP and the Contract shall be governed and construed in accordance with the laws of the State of Alabama, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, or suit between Auburn University and Contractor that arises out of or relates to performance of the Contract shall be brought and conducted solely and exclusively within the appropriate court for Lee County, for the State of Alabama. Provided, however, that if any such claim, action, or suit may be brought only in federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the Southern District of Alabama. Contractor hereby consents to the in personam jurisdiction of said courts.

GOVERNMENT EMPLOYMENT STATUS:

- A. If this payment is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.
- B. Contractor certifies it is not an employee of Auburn University.

E-VERIFY. The successful supplier will have to attest to the following: By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

INDEMNITY, RESPONSIBILITY FOR DAMAGES:

- A. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this RFP, the Contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless the State of Alabama, Auburn University, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this RFP or the Contract.
- B. Contractor shall have control of the defense and settlement of any claim that is subject to Section A immediately above in this Indemnity provision; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Alabama or any agency of the State of Alabama, nor purport to act as legal representative of the State of Alabama or any of its agencies, without first receiving from the University, in a form and manner determined appropriate by the University, authority to act as legal counsel for the State of Alabama, nor shall Contractor settle any claim on behalf of the State of Alabama without the approval of the University. The State of Alabama may, at its election and expense, assume its own defense and settlement in the event that the State of Alabama determines that Contractor is prohibited from defending the State of Alabama, or is not adequately defending the State of Alabama's interests, or that an important governmental principle is at issue and the State of Alabama desires to assume its own defense.

TAX COMPLIANCE CERTIFICATION: By signature on the Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Alabama or Federal Tax Laws of any nature. This includes compliance with Alabama law Section 41-4-116, Code of Ala 1975 that requires that every bid submitted and contract executed shall contain a certification that the vendor, contractor, and all of its affiliates that make sales for delivery into Alabama, or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable transactions within Alabama. Your signature herein certifies your compliance with this requirement.

TERM OF CONTRACT/EXTENSIONS: The Contract shall be awarded for ten (10) years.

WAIVER: Failure of Auburn University to enforce any provision of this RFP or the Contract shall not constitute a waiver or relinquishment by Auburn University of the right to such performance in the future nor of the right to enforce any other provision of this RFP or the Contract.

## **PART IV - CONTRACT REQUIREMENTS**

The following illustrates the desires and needs of Auburn University related to the campus Pouring and Vending Rights Agreement.

### **GENERAL ISSUES**

Additional Commitments and Unique Features: Please specify other identifiable financial commitments to support the proposal in addition to those listed on Worksheet 1. These may include commitments in the form of media tags, package and P.O.S. exposure, retail newspaper ads, promotional/experiential equipment, and other value-added support made available through strategic alliances with various media providers, customers, and contractors, including free media spots, Premiums, and consumer offers.

Beverage Product Selection and Pricing: Proposer should identify, in the form of Exhibit B to the Form Agreement, (by complete description including name, SKU, size, packaging, etc.) all Beverages proposed to be served by the Contractor on Campus. Please include additional Beverages available to Auburn University through subcontracts, Contractor agreements, or other cooperative efforts. Proposer should also identify the price that Auburn University will be charged to purchase additional product for use by Auburn University employees during work-related activities. As part of the Pouring and Vending Rights Agreement negotiation, Auburn University will identify which of the proposed Beverages will be included in the Contract and whether such Beverage will receive Negotiated Exclusivity. Future Beverages packaged, manufactured, or distributed by the Contractor, as well as other future Beverages available through other arrangements made by the Contractor, may be added to the Contract through the New Products process.

Auburn University shall be the sole judge of quality and equivalency of products offered. In case of any difference of opinion regarding quality of product or interpretation of general conditions and specifications, the decision of Auburn University shall be final and binding.

Please provide all storage and handling instructions that pertain to the Beverages proposed.

**On a continuing basis throughout the Contract's term, the Contractor and Auburn University will mutually determine, with Auburn University having final authority for the decision, flavors and brands to be dispensed at each location whether vending, fountain, retail, or other Beverages and Vended Snacks that may be served.**

Contractor Representatives: Each Proposer is required to identify the management team which will represent the Proposer in developing, implementing, managing, and operating the new Pouring and Vending Rights Agreement. Auburn University reserves the right, but is not obligated, to require a meeting with the proposed representatives as part of its evaluation of any or all proposals. Auburn University reserves the right to request a change in the management team if service is deemed unsatisfactory.

Cost of Product: Auburn University requires a minimum of a four (4) year commitment by the Contractor to maintain the cost of Beverages purchased by Auburn University, for use by Auburn University employees during work-related activities, in the Pouring and Vending Rights Agreement, with no more than a 3% increase, if any increase is proscribed, following the fourth year. With regard to Product to be sold at retail on the Auburn University campus, each proposal must identify a proposed pricing structure for all Beverages sold, packaged, manufactured, distributed, or otherwise offered by Proposer, as well as additional Beverages that are available through Contractor agreements, alliances, or other cooperative efforts.

- The pricing structure should include specific pricing commitments and incentives and identify the Beverage category, package size, and case count (if applicable), and cost of each Beverage offered by Proposer.
- Pricing commitments shall be made without regard to which Auburn University operations or communities may provide or sell the Beverages.
- Cost of product sold to Auburn University's dining and concession contract managers should be no higher than the Contractor's national agreement with the national dining and concessions contract management firms.
- The cost of product sold to the University should include transportation and delivery charges and F.O.B. destination named in the proposal. No additional charges will be allowed for fuel, packing, unloading, storage, or partial shipments.
- Please also include any container return allowances which may be in effect.

Proposal should state that, through the term of the Contract and any agreed-upon extension, Auburn University will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

Equipment Requirements: The Contractor will furnish and install new or like new, uniformly branded, Auburn University-specified coolers, fountain units, vending machines, bulk CO<sub>2</sub> and other such equipment at no charge to Auburn University (not to include other-vendor-owned equipment such as on-campus restaurants). Proposer should include with its proposal a description (pictures) of proposed equipment. All equipment must be Energy Star rated, equipped with Vending Misers or equivalent devices, and approved by Auburn University prior to installation or delivery. The Contractor will furnish/deliver applicable replacement equipment in the case of a major breakdown, at no charge to Auburn University. The Contractor shall furnish equipment and advertising material to properly merchandise the products. The requirement to provide necessary equipment to Auburn University will continue through the Contract term, including needs for upgrading and for additional sites and needs that may come about. Auburn University reserves the right to ADD or DELETE departments or change the dispensing equipment at any time as the need arises.

Equipment Responsibility: Ownership of all machines, equipment, etc. furnished by the Contractor and placed on Auburn University property will remain with the Contractor. Expenses resulting from any damage, including acts of vandalism or accident, will be the responsibility of the Contractor.

The Contractor shall be responsible for any property damage that occurs during the installation or removal of any machine. The Contractor will reimburse Auburn University if repairs to Auburn University property are required.



The Contractor is responsible for the proper custody and care of any Auburn University-owned property furnished for use in connection with the performance of the Contract and will reimburse Auburn University for its loss or damage.

The Contractor will maintain all equipment provided in a clean and sanitary condition and in compliance with all local, county, state, and federal regulations.

Contractor will only place Contractor-provided equipment at locations on campus approved by Auburn University.

Contractor will promptly (within three (3) working days) remove any Contractor-provided equipment when requested by Auburn University to do so.

Negotiated Exclusivity: Auburn University acknowledges and recognizes the tremendous benefit of providing a level of exclusivity in this Pouring and Vending Rights Agreement. Negotiated Exclusivity will be fully defined at the time of Contract execution and could, possibly, result in multiple contracts (by category) with different exclusivities provided. Exclusivity will not include Athletics' consumption and advertising rights associated with Isotonic Sideline Rights. Proposers should note that it is Auburn University's intent to include Pre- and Post-mix exclusive and also to reserve 20% of retail shelf space for competitor Beverages. Retail shelf space shall include fountain, refrigerated sales, and store pallet or shelf space but not in drink vending machines.

Negotiated Exposure: The Pouring and Vending Rights Agreement shall provide limited "exposure" rights outside of Athletics. Proposers should understand that Athletics exposure rights shall only be granted through Auburn University's Multi-Media Rights Provider. Payment of a "Pouring Rights Fee" shall not entitle a successful Proposer to any negotiated exposure in Athletics. Proposer's purchase of negotiated exposure from the Multi-Media Rights Provider shall be required for such rights, in addition to the payment to Auburn University of a signing bonus (if applicable) and annual Pouring Rights Fee. Auburn University may give limited exposure, on a per event basis, in exchange for cash or product, to sponsor "other activities" on campus.

New Products Process: Auburn University recognizes that, regardless of the defined Beverages under Contract and the Negotiated Exclusivity, the market for products offered by the Contractor will change, and new products will become available that Auburn University and Contractor may wish to include under the Contract. When these instances and opportunities occur, Auburn University will welcome a proposal of product addition to the Contract by the Contractor. This proposal will be submitted by Contractor to the Contract Administrators and will include, at a minimum, the full product(s) description and proposed compensation to Auburn University for adding the product(s). Auburn University will then decide whether or not to accept the proposal and amend the Contract. In the cases where both parties wish to "test" products at Auburn University, a trial period proposal may be submitted to Auburn University through the same process.

Robotic Convenience Store – Educational and corporate campuses are beginning to operate machine or robotic operated convenience stores. Auburn University is favorably inclined to permit the operation of one or more such facilities/machines on its campus. Proposers are encouraged to include information in their proposals concerning the space, power and other requirements for the operation of such a machine, as well as a specific breakdown for costs and requirements which would need to appear in the Contract regarding same.

Historical Vending Information

Commissions: The existing Vending Commission Rate on beverages is 50%. The existing Vending Commission Rate on snacks is 35%

Vending Equipment: Approximately 75% of vending machines on Campus currently have card-reading capabilities. The Contractor must maintain card reading capabilities on at least 75% of machines on campus.

### FINANCIAL STRUCTURE AND TOTAL ECONOMIC VALUE

In consideration for this Negotiated Exclusivity, Auburn University shall receive appropriate compensation. The financial and product package offered in exchange for the Negotiated Exclusivity shall include, but not be limited to, the following criteria, separated by each of the five (5) categories: Carbonated Soft Drinks, Bottled Water, Isotonics, Energy Drinks, and Vended Snacks:

- Initial Signing Bonus paid at Contract execution (if applicable)
- Annual Rights Fee Payment for Negotiated Exclusivity for Pouring and Vending Rights Agreement
- Product Pricing
- In-kind Product
- Commission on Vended Beverages
- Commission on Vended Snacks
- Capital Cost of Vended Snack machines born by Contractor
- Value of Concessions Enhancements
- Value of Internships provided by Contractor

Please specify the amount and schedule of payment proposed by Proposer for the Negotiated Exclusivity.

Note that there will be no first rights of refusal granted on extended terms under the Contract.

Financial Reporting and Control: Please provide a listing (with examples and frequency of issuance) of reports that will be periodically furnished to Auburn University, i.e., sales reports, sales histories, promotional activities, etc. Please demonstrate the Proposer's systems and methodology for storage and inventory control systems for Beverage product.

Auburn University reserves the right to audit, through a designated auditor of its choosing, any aspect of the Pouring and Vending Rights Agreement as performed by the Contractor at the Contractor's expense. The Contractor shall keep full, timely, and accurate records in accordance with generally accepted accounting practices and satisfactory to Auburn University. The Contractor will furnish Auburn

University with all requested daily, weekly, monthly, and annual reports to verify pertinent financial information so requested. Separate and consolidated operational reports and other supporting data will be provided to Auburn University for each Beverage operation on Auburn University's campus by the Contractor and/or any subcontractors. If the proper reporting is not provided as requested or required a written request asking for the reports will be sent to Contractor. If the Contractor does not comply within an agreed upon time, then Auburn University Procurement and Payment Services will be notified for further actions. Causes of abnormal revenue or meter readings will be noted and the Contractor will work with Auburn University for an explanation. Any lost revenue due a result of normal business operations will be absorbed by the Contractor. Please define resolution steps when reporting is not provided as requested or required or is inaccurate.

Free Beverage Product: All Beverage product contributions shall be valued at Auburn University contracted pricing.

### **PART V(a) – MAJOR EVALUATION CRITERIA**

The following listed evaluation criteria are among those Auburn University will utilize to select finalists for the negotiation phase of the Contract award. Failure to explicitly and completely respond to the Contract requirements in Part IV through these criteria will result in poor evaluation of your proposal.

The award of the Contract will be based upon a comprehensive review, analysis, and negotiation of the proposal which best meets the needs and objectives of Auburn University. The specific evaluation criteria will include, but not be limited to, the following:

#### **Financial Structure and Total Economic Value – 50%**

- Initial Signing Bonus paid at Contract execution (if applicable)
- Annual Rights Fee Payment for Negotiated Exclusivity for Pouring and Vending Rights Agreement
- Product Pricing
- In-kind Product
- Commission on Vended Beverage Sales
- Commission on Vended Snack Sales

Pouring and Vending Rights Operations, and Management Plan - 20%

- Innovative and creative management, marketing, and operational strategies and programs
- Value of Concessions Enhancements
- Contract administration, communication, and reporting
- Process to assure continual, optimal performance
- Accurate and user-friendly reporting tools and controls
- Highly flexible and inclusive contract administration procedures and operations management

Personnel, Commitment, and References – 20%

- Qualifications of Proposer and personnel committed to the Contract
- Past experience in maximizing similar Beverage or Food-related vending opportunities
- Resources available to assure meeting an aggressive transition and implementation schedule
- Qualifications of subcontractor(s), if any (such as installers, repair technicians, etc.)
- References from institutions similar to Auburn University

Robotic/ Machine-Operated Convenience Store – 5%

- Innovative and creative Purchase, Development and Adoption Plan for Construction/Placement of Store
- Financial Remuneration / Commission Plan for Store

Sustainability Commitment – 5%

- Provision of operation, management, and marketing support in service of the University's sustainability policy, goals and plans.
- Contractor's commitment to sustainability as demonstrated by Company policies and practices.

**PART V(b) - PRICING/FINANCIAL PACKAGE FOR CAMPUS POURING AND VENDING RIGHTS**

Please fill out Worksheet 1, the **Auburn University Remuneration Worksheet**.

**PART VI - PROPOSER CERTIFICATIONS**

- The attached coversheets for the RFP should be completed and signed.
- The State of Alabama Disclosure Statement should be completed and returned only one original needed.

**Worksheet 1**  
**Auburn University Remuneration Worksheet**

<b><u>One Time Signing Bonus (if applicable)</u></b>	
Bottled Water	\$
Isotonics	\$
Soft Drinks	\$
Energy Drinks	\$
Beverage Vending	\$
<u>Snack Vending</u>	\$
<b><u>Annual Rights Fees</u></b>	
Bottled Water	\$
Isotonics	\$
Soft Drinks	\$
Energy Drinks	\$
Beverage Vending	\$
<u>Snack Vending</u>	\$
<b><u>Commission Rate on Vending</u></b>	
12 ounce Cans	%
20 ounce Bottles	%
Isotonics	%
Energy Drinks	%
Beverage Vending	%
<u>Snack Vending</u>	%
Other	%
<b><u>In-Kind Annual Product Allowance</u></b>	<b><u>Expressed In Wholesale Pricing</u></b>
Bottled Water	\$
Isotonics	\$
Soft Drinks	\$
Energy Drinks	\$
Beverage Vending	\$
<u>Snack Vending</u>	\$
Other	\$
<b><u>Auburn University Corporate Price Discount</u></b>	
Bottled Water	%
Isotonics	%
Soft Drinks	%
Energy Drinks	%
Other	%
<b><u>Auburn University Concessions Enhancements and Vending Enhancement (as defined in Form Contract)</u></b>	
Concessions Enhancements (Section 10.1)	\$
Vending Investment (Section 7.1(b))	\$

## **EXHIBIT A**

### **GENERAL INFORMATION**

#### **Vision**

Auburn University will emerge as one of the nation's preeminent comprehensive land-grant universities in the 21st century. Central to all its functions will be the University's historic commitment of service to all Alabamians as the State becomes a part of a global society with all of its challenges and opportunities. The University will be widely recognized for the quality of its undergraduate, graduate and professional educational programs, the effectiveness of its research and outreach programs and the broad access to the University provided through the innovative use of information technology. The University will ensure the quality of its programs through the careful focusing of its resources in areas of institutional strengths. One constant will remain unchanged at the University--that intangible quality Auburn men and women call the "Auburn Spirit."

#### **Mission**

Auburn University's mission is defined by its land-grant traditions of service and access. The University will serve the citizens of the State through its instructional, research and outreach programs and prepare Alabamians to respond successfully to the challenges of a global economy. The University will provide traditional and non-traditional students broad access to the institution's educational resources. In the delivery of educational programs on campus and beyond, the University will draw heavily upon the new instructional and outreach technologies available in the emerging information age.

As a comprehensive university, Auburn University is committed to offering high-quality undergraduate, graduate, and professional education to its students. The University will give highest priority for resource allocation for the future development of those areas that represent the traditional strengths, quality, reputation, and uniqueness of the institution and that continue to effectively respond to the needs of students and other constituents. Consistent with this commitment, the University will emphasize a broad and superior undergraduate education that imparts the knowledge, skills, and values so essential to educated and responsible citizens. At the same time, the University will provide high-quality graduate and professional programs in areas of need and importance to the state and beyond. To accomplish these educational goals, Auburn University will continue to compete nationally to attract a faculty distinguished by its commitment to teaching and by its achievements in research, both pure and applied. The University will strive to attract a faculty that will bring distinction and stature to the undergraduate, graduate, and professional programs offered by the University.

Because research is essential to the mission of a land-grant university, Auburn University will continue development of its research programs. The primary focus of this research will be directed to the solution of problems and the development of knowledge and technology important to the state and nation and to the quality of life of Alabama citizens. The University's research programs will make important contributions to instructional programs through the involvement of graduate and undergraduate students and the renewal of the faculty. Research

will also provide the knowledge base for outreach programs. In carrying out its research mission, the University will emphasize established areas of strength and will focus available resources in those areas of research and doctoral study that are, or have the potential to develop into nationally and internationally recognized centers of excellence.

Extension and outreach programs are fundamental to the land-grant mission because these programs directly affect the lives of all citizens in the state. The University will maintain the strengths of its traditional outreach programs and will increasingly involve the broader University in outreach programs that respond to the changing needs of the society in which we live. The University will continue to seek new and innovative ways to reach out to the people it serves.

Auburn University is committed to integrating sustainability into all aspects of the University including: operations, instruction, research, and outreach activities. Auburn University considers sustainability a core value and strives for excellence in sustainability through continuous assessment and improvement.

## 2014 Fall Term Summary

### Enrollment by College/School and Career Level

<b>College/School/Level</b>	<b>2013</b>	<b>2014</b>
Agriculture	983	1,079
Architecture, Design and Construction	1,098	1,179
Business	3,399	3,722
Education	1,617	1,636
Engineering	4,294	4,618
Forestry and Wildlife Sciences	287	290
Human Sciences	1,134	1,111
Liberal Arts	3,410	3,273
Nursing	731	808
Pharmacy	590	580
Sciences and Mathematics	2,713	2,703
Veterinary Medicine	482	505
Interdepartmental	133	210
Total Undergrad. and First Prof.	20,871	21,714
Agriculture	272	276
Architecture, Design and Construction	147	154
Business	532	609
Education	915	957



Engineering	885	921
Forestry and Wildlife Sciences	68	72
Human Sciences	112	127
Liberal Arts	456	428
Nursing	79	108
Pharmacy	35	43
Sciences and Mathematics	353	352
Veterinary Medicine	62	69
Interdepartmental	77	82
Total Graduate	3,993	4,198
Total Enrollment	24,864	25,912

#### Enrollment by Gender and Career Level

Level and Gender	2013	2014
Males	10,108	10,536
Females	9,691	10,093
Total Undergraduate	19,799	20,629
Males	296	292
Females	776	793
Total First Professional	1,072	1,085
Males	2,224	2,286
Females	1,769	1,912
Total Graduate	3,993	4,198

**EXHIBIT B – See Attached**

**Form of Pouring and Vending Rights Agreement**

**(“Form Agreement”)**