

TERMS AND CONDITIONS FOR THE CITY OF FRESNO'S REQUEST FOR QUOTE PROCESS

Definitions: Wherever used in these Specifications the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "Buyer," "Vendee," "City of Fresno" shall each mean and refer to the City of Fresno, CA, unless otherwise indicated.
- (c) "Bidder" shall mean and refer to each person or other entity submitting a bid proposal, whether or not such person or entity shall become a Seller by virtue of award of a contract by the buyer.
- (d) "Contract" shall mean and refer to the City's acceptance of vendor's bid by issuance of a Purchase Order.
- (e) "Goods," "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under this bid

Purchase Order Identification: The City's Purchase Order number must appear on all invoices, packages, shipping notices, instructions manuals and other written documents affecting this order. A packing list shall be enclosed in each box or package shipped under this contract, indicating the contents therein.

Acceptance of Good: All goods purchased hereunder are subject to Buyer's inspection and acceptance. Goods rejected by Buyer for whatever reason shall be held, transported or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses.

Liquidation Damages: Time of delivery is of the essence for the contract entered into pursuant to these specifications, and the City and the Vendor each agree that actual damages to the City, and actual damages for the inconvenience and loss which will flow to the inhabitants of the City, from any delay in delivery beyond the date or

dates provided herein, or portions thereof, are extremely difficult or impossible to determine, and, accordingly, it is agreed that the Vendor shall be liable for and shall pay to the City, as fixed, agreed, and liquidated damages, and not as a penalty the sum specified in the bid proposal per day for each calendar day of delay in delivery of equipment or materials from the maximum delivery date as specified herein or in any written extensions of time granted by the City. Such payment due the City will be deducted by the City from any payments due to the Vendor for item(s) delivered.

III. TERMS AND CONDITIONS (continued)

Delivery: Unless otherwise stated in the purchase order, delivery is to be made between the hours of 8 A.M. and 3:30 P.M. and during regular City of Fresno working days.

If Vendor is delayed making delivery by any acts or neglect of Buyer or its employees, or by acts of God which Vendor could not reasonably have foreseen and provided for, or by illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or by any illegal general lockouts or other defensive action by employers, Vendor shall have no claim for damages against Buyer for any such cause of delay. Vendor shall in such cases be entitled to such extension of time as shall reasonably compensate for actual loss of time occasioned thereby.

No such extension of time shall be granted unless Vendor notifies the Purchasing Manager, in writing, of the condition or event which is expected to cause a delay in delivery and the actual or estimated number of days of delay anticipated on account thereof, within one week after the commencement or occurrence of the condition or event.

Termination for Non-Delivery: If Vendor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the contract, the Purchasing Manager of Buyer, acting for and on behalf of Buyer, may at any time after the expiration of the time for delivery, terminate the contract as to the whole thereof, or in the event partial

delivery has been made and accepted, as to such of the items or services to be furnished which have not been delivered or accepted prior to such termination.

Such determination shall be effective upon receipt by Vendor of written notice of termination from said Purchasing Manager, which notice shall be deemed to have been received by Vendor, if mailed, within forty-eight hours at Vendor's address as contained in Vendor's Bid Proposal to Buyer, or, if personally delivered, upon the delivery thereof of Vendor, the authorized representative of Vendor, or to the Vendor's said address.

In case of default by Vendor, Buyer may procure the goods or services from another source and may recover any loss occasioned thereby from any unpaid balance due the Vendor. The prices paid by Buyer shall be considered the prevailing market price at the time such purchase is made.

Payment: Unless otherwise provided in the specifications, no progress payments will be made. The City will pay a sum equal to 100 percent of the total contract cost after completion of the contract and upon acceptance by the City.

The Vendor must submit invoices to the invoicing address listed on the purchase order to initiate the payment process. All invoices must conspicuously display the City of Fresno Purchase Order Number. Invoices without Purchase Order Number will be returned to Vendor for identification and payment will be delayed.

Payment of the contract price shall be made by Buyer to Vendor, in lawful money of the United States, by warrant of Buyer issued and delivered to Vendor in the ordinary course of City business promptly after completion of delivery of the specified goods or services and their acceptance of Buyer.

Assignment of Payment: Vendor hereby agrees it will not assign the payment of any monies due it from the City under the terms of this contract to any other individual(s), corporation(s) or entity(s). The City retains the right to pay any and all monies due Vendor directly to Vendor.

III. TERMS AND CONDITIONS (continued)

Warranty: For the purpose of equipment and material, the Vendor, unless otherwise provided in the Specifications, shall guarantee all items furnished in accordance with the standard guarantee offered by the manufacturer to buyers and consumers of the product. The Vendor shall be responsible for all warranty costs, including the transportation costs to and from the repair station.

Patents: Seller warrants that Buyer's purchase, installation, or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right.

Workmanship Guaranty: The workmanship of the goods or services provided to the City by the Vendor will be in accord with generally accepted standards.

Products Liability Insurance: If these specifications are for equipment with moving parts, the Vendor shall provide the City of Fresno with verification of manufacturer's products liability insurance in excess of \$1,000,000 on said bid equipment, prior to issuance of a purchase order.

OSHA Compliance: For the purpose of equipment and material, the items covered by this purchase order or contract must conform with the Safety Orders of the State of California, Division of Industrial Safety, or the Federal Standards established by the Occupational Safety and Health Act, whichever is more restrictive.

Indemnification To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of

performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any

of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. This section shall survive termination or expiration of this Contract.

Attorney's Fees: In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom.

Governing Law: The laws of California shall govern this contract, and the venue of any action brought hereunder must be laid in or transferred to the County of Fresno, State of California.

