

**SANTA CLARA COUNTY PURCHASING DEPARTMENT
STANDARD INSTRUCTIONS AND CONDITIONS FOR INVITATIONS TO BID (ITB'S),
REQUESTS FOR PROPOSALS (RFP'S), REQUESTS FOR QUOTATIONS (RFQ'S),
PURCHASE ORDER (PO'S), AND CONTRACTS**

SECTION I Applicable to bids only.

Note: The reference to "bids" in the following paragraphs applies to ITB's, RFPs, and RFQs.

1. **PREPARATION OF BIDS:** (a) All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing bid.
(b) Brand names and numbers are for reference only. Bids on equal items will be considered, provided the bid clearly describes the article offered and it is equal in quality and performance. When items offered do not comply with the bid specifications, a detailed description of variance, feature by feature, must be furnished with the bid. Submission of descriptive literature alone does not meet this requirement.
(c) State brand, or make, on each item. If offering other than the make, model or brand specified, the manufacturer's name and catalog number must be given, and descriptive literature attached to the bid.
(d) Quote on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.
(e) Time of delivery is a part of the bid and must be adhered to. Bidder shall state promised delivery in the column provided opposite an individual item. Time, if stated as a number of days, shall mean "calendar" days.
(f) All bids must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
2. **SUBMISSION OF BIDS:** (a) Each bid, RFQ, and RFP must be submitted on enclosed County forms, in a sealed envelope, with bid number, closing date and time noted on the outside of the envelope.
(b) Bid and RFQ and modifications or corrections thereof received after the closing time specified will be rejected.
EXCEPTION: Late RFQ's may be accepted as long as other quotes submitted have not been publicly read or discussed.
(c) RFPs and modifications or corrections thereof may be accepted after the closing time specified, at the discretion of the Purchasing Manager.
3. **FAILURE TO BID:** If you do not quote, return bid sheet and state reason—otherwise your name may be removed from our mailing list.
4. **SAMPLES:** Samples of items, when required, must be furnished free of expense to the County; and, if not destroyed by tests may, if requested at the time the sample is furnished, be returned at the bidder's expense.
5. **TIE BIDS:** All other factors being equal, the contract shall be awarded to the Santa Clara County vendor or, if neither or both are Santa Clara County vendors, it may be awarded by the flip of a coin in the presence of witnesses, or the entire bid may be rejected and re-bid.
6. **INTERPRETATION:** Should any discrepancies or omissions be found in the bid specification, or doubt as to their meaning, the bidder shall notify the Buyer in writing at once. The Buyer will send written instruction or addenda to all bidders. The County shall not be held responsible for oral interpretations. Questions must be received at least ninety-six (96) hours (4 working days) before bid opening. All addenda issued shall be incorporated into the contract.
7. **AWARD:** (a) Unless the bidder specifies otherwise in his bid, or the bid gives notice of an all-or-none award, the County may accept any item or group of items of any bid.
(b) Bids are subject to acceptance at any time within 60 days after opening, unless otherwise stipulated in bid.
(c) The County reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.
(d) Terms of less than 30 days for cash discount will be considered as net.
(e) For bid evaluation purposes, the County does not deduct cash discounts which require payment in less than 30 days. However, if the County accepts an offer, any cash discount included in the offer will form a part of the related purchase order or contract.
8. **DISCLOSURE OF BID INFORMATION:** After award, all bids shall be open to public inspection. The County assumes no responsibility for the confidentiality of information offered in a bid.

SECTION II Applicable to bids and PO's

Note: The reference to bids includes ITB's, RFPs and RFQs; the reference to PO's also includes Contracts. The term "vendor" shall include "contractor".

1. **ACCEPTANCE OF BID:** A written Purchase Order mailed, or otherwise furnished, to the successful bidder within the time for Acceptance results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
2. **DELIVERY:** (a) For any exception to the delivery date as specified on this order, Vendor shall give prior notification and obtain written approval from the Purchasing Department Buyer. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time.
(b) If Vendor has failed to specify promised delivery time, it shall be 30 days after receipt of order by the Vendor or as indicated by the purchase order.
(c) The acceptance by Purchaser of late performance, with or without objection or reservation, shall not waive the right to claim damage for such breach, and shall not constitute a waiver of the requirements for the timely performance of any other Vendor obligation.
3. **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped FOB Destination, freight prepaid and allowed, and unloaded to the dock. Where shipping addresses indicate room numbers, it will be up to the Vendor to make delivery to that location at no additional charge. When specific authorization is granted to ship goods FOB Shipping point, Vendor agrees to prepay all shipping charges, to route cheapest common carrier (if routing instructions are not included on PO), to bill freight as a separate item on the invoice, and to attach a copy of the freight bill to the invoice if freight exceeds \$50.00. It is also agreed that Purchaser reserves the right to refuse COD shipments.

4. **RISK OF LOSS:** Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction to goods, and materials ordered herein which occur prior to delivery; and such loss, injury or destruction shall not release Vendor from any obligation hereunder.
5. **TAXES, CHARGES AND EXTRAS:** (a) Unless otherwise definitely specified by Vendor the prices quoted do not include Sales or Use taxes. Unless Vendor's bid clearly indicates that no sales or use tax will be due, it will be assumed that sales or use tax will be added to the quoted price.
(b) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, except taxes legally payable by the County, will be paid by the County unless expressly included and itemized in the bid.
(c) The County does not pay Federal Excise Taxes (F.E.T). Do not include these taxes in your bid price, but do list the amount of any such tax as a separate item. The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94 730482K
(d) The Vendor shall be responsible for payment of property tax on rented equipment.
6. **IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, and other written documents affecting this order shall contain the applicable PO number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order. Invoices will not be processed for payment until all items invoiced are received.
7. **PAYMENT TERMS:** Invoice payment terms will be computed either from the date of delivery and acceptance of the goods/services ordered, or the date of receipt of correct and proper invoices, prepared in accordance with the terms of the purchase order, whichever date is later. Payment is deemed to have been made on the date the County mails the warrant.
8. **LATE PAYMENT CHARGES:** The County shall not be responsible for late payment charges unless they are an express part of the contract or purchase order. A payment is late only if invoice payment time exceeds the time allowed by the payment terms. Computation of payment time shall be based on Section II, paragraph 7 (seven), of these standard terms and conditions.
9. **NON-WAIVER BY ACCEPTANCE OF VARIATION:** Neither acceptance of nor payment for any item furnished or work performed by the Vendor shall operate as a waiver of any of the provisions of this PO nor shall a waiver of any breach hereof be deemed to be a waiver of any other or subsequent breach.
10. **ALTERATION OR VARIATION OF TERMS:** It is mutually understood and agreed that no alteration or variation of the terms of this bid or PO shall be valid unless made or confirmed in writing and signed by the parties hereto.
11. **COMPLIANCE WITH STATUTE:** Vendor hereby warrants that all applicable Federal and State statutes and regulations or local ordinances will be complied with in connection with the sale and delivery of the property furnished.
12. **WARRANTY:** (a) Vendor warrants to County and/or County's customer that the goods and/or services covered by this order will conform to the drawings, specifications, samples, description and time provisions furnished by County and will be of first class material and workmanship and free from defects, and County reserves the right to cancel the unfilled portion of an order without liability to Vendor if the warranty is breached. Goods will be received subject to inspection and acceptance at destination by County and risk of loss before acceptance shall be on Vendor. Defective goods rejected by County may without prejudice to any other legal remedy be held at Vendor's risk and returned to Vendor at Vendor's expense. Defects are not waived by acceptance of goods or by failure to notify Vendor thereof.
(b) Unless otherwise agreed in writing by the parties, all implied and express warranties pursuant to the California Commercial Code, sections 2312-2317, shall apply to the goods covered by this bid or PO. Furthermore, warranties shall run for a minimum of twelve months after installation and acceptance and claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.
13. **PATENT INDEMNITY:** The Vendor shall hold the County of Santa Clara, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or PO.
14. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims or encumbrances of any kind.
15. **HOLD HARMLESS:** The Vendor agrees to indemnify and save harmless the County, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Vendor in the performance of this contract. The Vendor shall provide necessary worker's compensation insurance at Vendor's own cost and expense.
16. **INDEPENDENT CONTRACTORS:** The parties hereto agree that the Vendor, and any agents and employees of Vendor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of Santa Clara County.
17. **RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT:** (a) The County may terminate this agreement and be relieved of the payment of any consideration to Vendor should Vendor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due the Vendor under this agreement, and the balance, if any, shall be paid by Vendor upon demand.
(b) In the event any item furnished by the Vendor in the performance of the contract or purchase order should fail to conform to the specifications therefor, or to the sample submitted by the Vendor with his bid, the County may reject the same, and it shall thereupon become the duty of the Vendor to reclaim and remove the same forthwith, without expense to the County and immediately to replace all such rejected items with others conforming to such specifications or samples; provided that should the Vendor fail, neglect, or refuse to do so the County shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such item and to deduct from any moneys due or that may thereafter become due to the Vendor the difference between the prices named in the contract or purchase order and the actual cost thereof to the County. In the event the Vendor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of the County to purchase in the open market and to reimbursement set forth above shall apply, except when delivery is delayed by fire, strike, freight embargo, or Act of God or the government.
(c) Cost of inspection of deliveries or offers for delivery, which do not meet specifications, will be for the account of the Vendor.
(d) The rights and remedies of the County provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
18. **SAFETY AND HEALTH STANDARDS:** Vendor agrees to comply with the applicable provisions of the California Occupational Safety and Health Act of 1973, (Labor Code Section 6300 et. seq.) and the standards and regulations issued thereunder. Seller agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Seller's failure to comply with the act and any standards or regulations issued thereunder.

19. NONDISCRIMINATION: (a) Contractor shall comply with all applicable Federal, State and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1102.1. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(b) Violation of this provision shall be deemed a material default by Vendor giving County a right to terminate the Purchase Order.

20. EQUIPMENT RENTAL TERMINATION: In the event that funds are not appropriated in any fiscal year for the payment of rental or lease/purchase charges and are not appropriated for the cost of other equipment performing substantially the same function which would replace the equipment leased hereunder, then lessee may terminate the contract without penalty on or before September 30th of such fiscal year by giving thirty (30) days written notice. Lessee agrees to make every reasonable effort including, but not limited to, requesting budget funds to be appropriated in order to avoid cancellation or termination of the rental or lease/purchase. Upon termination of this lease, lessor shall have the right to recover any and all amounts then due or which may have accrued up to the date lessor receives possession of the unit.

21. PAYMENT OF PREVAILING WAGES: Except for projects of \$1000 or less, vendors who perform carpet laying or building construction, alteration, demolition or repair must pay all workers on the County project the prevailing wage pursuant to the California Labor Code, sections 1770 through 1777.7. A copy to the prevailing wage rate determination is on file and may be seen at the office of the Clerk of the Board. The determination is issued by the California Department of Industrial Relations.

22. ASSIGNMENT: The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract or his right, title, or interest in or to the same, or any part thereof without written consent of the County Purchasing Agent. Any attempt to do any of the foregoing without written consent shall be void. This contract shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.

23. CONTRACTING PRINCIPLES: Service contracts are subject to the Resolution of Contracting Principles adopted by the Board of Supervisors. Contractor shall comply with the entire resolution including the following:

(a) Contractor shall, during the term of the contract, comply with all applicable federal, state, and local rules, regulations and laws.

(b) Contractor shall maintain financial records adequate to show that County funds paid under any contract for services were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of the contract and for a period of three (3) years from termination of the contract or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of the contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the grounds of noncompliance with this Section, and the opportunity to respond and discuss the County's intended action.

24. YEAR 2000: Vendor agrees that it is Vendor's responsibility to ensure that any hardware, software, and/or embedded chip devices used by Vendor in the performance of this PO, other than those owned or provided by the County, shall accurately process without error date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations. Vendor's indemnification obligations to County under this agreement shall comply to claims, liability, and loss. Injury or damage resulting from failure of any such hardware, software, and/or embedded chip devices to perform in compliance with this standard.

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