

## FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

### Standard Instructions and Conditions for Invitations to Bid (ITB'S) Requests for Proposals (RFP'S), Requests for Quotations (RFQ'S), Purchase Orders (PO'S), and Contracts

*When a standard instruction or condition conflicts with instructions, conditions, or terms specified in other areas of this ITB, RFQ, PO, or contract, the language in the other areas prevails.*

#### **SECTION I**      Applicable to bids only.

Note: The reference to "bids" in the following paragraphs applies to ITB's, RFP's, and RFQ's. The reference to "contracts" includes purchase orders.

#### 1. PREPARATION OF BIDS:

- (a) All prices and notations must be printed in ink or typewritten. No erasures are permitted. Error's 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 unless otherwise stated in the specification. Bids on equal items will be considered provided the bid clearly describes the article offered, and the District judges it to be 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 must be 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) The District will not consider prompt payment discount terms that require payment in less than ten (10) days.
- (f) Quotes must be f.o.b. destination, freight prepaid and allowed. All applicable charges for freight, shipping, or handling must be included in the quoted prices.
- (g) Payment terms shall be net 30 days unless the bid form requires otherwise.
- (h) 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.
- (i) All bids must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- (j) Cost of bid preparation and participation in the bidding process shall be borne by the bidder.

#### 2. SUBMISSION OF BIDS:

- (a) Each bid must be signed in ink and submitted on originals of the District forms in a sealed envelope with bid number, closing date and time noted on the outside of the envelope unless the bid instructions explicitly allow submission by another means such as fax or e-mail.
- (b) Bid modifications or corrections thereof received after the closing time specified will not be considered. Late bids shall be returned to the bidder unopened.

EXCEPTIONS: 1. Late RFQ's may be considered as long as other quotes submitted have not been publicly read or discussed.  
2. RFP's and modifications or corrections thereof may be considered after the closing time specified at the discretion of the District's Purchasing Director.

#### 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 District.

If samples are not destroyed by tests they may be returned to the bidder at the bidder's expense if so requested by bidder at the time it furnishes the samples.

5. TIE BIDS: All other factors being equal, the contract shall be awarded to the vendor that has a Santa Clara County business address or, if neither or both have such a business address, the contract 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 documents, or doubt as to their meaning, the bidder shall notify the responsible District Buyer in writing at once. The Buyer will respond by sending written instruction or addenda to all bidders. The District shall not be held responsible for oral interpretations. Questions must be received at least six (6) District working days before bid opening. All addenda issued shall be incorporated into the bid.
7. AWARD:
  - (a) Unless the bidder specifies otherwise in his bid response or the District's bid document gives notice of an all-or-none award, the District may accept any item or group of items from any bid.
  - (b) Bids are subject to acceptance at any time within ninety (90) calendar days after opening unless otherwise stipulated in bid.
  - (c) The District reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.
8. DISCLOSURE OF BID INFORMATION: After award, all bids shall be open to public inspection. The District assumes no responsibility for the confidentiality of information in a bid response.
9. BID PROTEST: Any Bidder submitting a Bid Proposal to the District may file a protest of the District's intent to award the Contract provided that each and all of the following are complied with:
  - (a) The bid protest is in writing;
  - (b) The bid protest is filed and received by the District's Director of Purchasing Services not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and
  - (c) The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

Any bid protest not conforming with the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Director of Purchasing Services or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the District's Director of Purchasing Services or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Board of Trustees will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid protest as reflected in the written statement of the Director of Purchasing Services or his/her designee. Action by the District's Board of Trustees relative to a bid protest shall be final and not subject to appeal or reconsideration by the District, any employee or officer of the District or the District's Board of Trustees. The rendition of a written statement by the Director of Purchasing Services (or his/her designee) and action by the District's Board of Trustees to adopt, modify or reject the disposition of the bid protest reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest, or the District's decision to reject all Bid Proposals. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the

other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

**SECTION II** Applicable to bids and PO's

Note: The reference to bids includes ITB's, RFP's and RFQ's; the reference to Purchase Orders or PO's includes Purchase Orders and 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 Purchase Order, Vendor shall give prior notification and obtain written approval from the responsible District 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 a promised delivery time, it shall be 30 calendar days after receipt of Purchase Order unless the Purchase Order otherwise provides.
  - (c) The acceptance by District 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 by the District, 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 the Vendor's responsibility to make delivery to that location at no additional charge. If the District grants authorization to ship goods FOB shipping point, Vendor agrees to prepay all shipping charges, to route cheapest common carrier (unless other routing instructions are 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 actual freight cost exceeds \$100.00 or the estimated amount shown in the bid and on the PO, whichever is greater. It is also agreed that the District 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 actual delivery to the District. Such loss, injury or destruction shall not release Vendor from any obligation hereunder.
5. **TAXES, CHARGES AND EXTRAS:**
  - (a) Unless otherwise specified on the District's bid forms, the quoted prices must specify applicable sales tax.
  - (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 District, will be paid by the District unless expressly included and itemized in the bid.
  - (c) The District does not pay Federal Excise Taxes (F.E.T.). Do not include these taxes in your bid price, but show the amount of any such tax as a separate information item. The District will furnish an exemption certificate in lieu of paying F.E.T. The District's federal registration for such transactions is: District #94 1597718
  - (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 from 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 District mails the warrant. Invoices shall not be payable until all items listed on the invoice have been received and accepted by the District.
8. **LATE PAYMENT CHARGES:** The District 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 the 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 in writing and signed by the parties hereto.
11. **COMPLIANCE WITH STATUTE:** Vendor hereby warrants that all applicable Federal, State, and local statutes, regulations, and local ordinances will be complied with in connection with the sale and delivery of the items furnished.
12. **WARRANTY:**
  - (a) Vendor warrants to District and/or District'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 District and will be of first class material and workmanship and free from defects, and District 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 District, and risk of loss before actual delivery and acceptance shall belong to the Vendor. Defective goods rejected by District 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 nor by failure to notify Vendor thereof.
  - (b) Unless otherwise agreed in writing by the parties, all implied and expressed 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 (12) 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 District and 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 District, 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 performance of this contract. The Vendor shall provide necessary workers compensation insurance at Vendor's own cost and expense.

16. INDEPENDENT CONTRACTORS: The parties hereto agree that they are independent contractors toward each other and that the Vendor, and any agents and employees of Vendor, in the performance of this Purchase Order, are independent contractors and are not officers, employees, or agents of the District.
17. RIGHTS AND REMEDIES OF DISTRICT FOR DEFAULT:
  - (a) The district may terminate the PO or contract and be relieved of the payment of any consideration to Vendor should Vendor fail to perform the covenants therein contained at the time and in the manner herein provided. In the event of such termination the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due the Vendor under the PO or contract, 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 PO or contract should fail to conform to the specifications therein, or to the sample submitted by the Vendor with his bid, the District 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 District and to immediately 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 District 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 District. 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 District to purchase in the open market and to reimbursement set forth above shall apply except when delivery is delayed by fire, strike, freight embargo, Acts of God, or Acts of 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 District provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or in the purchase order or 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. Vendor agrees to indemnify and hold harmless the District for any loss, damage, fine, penalty, or any expense whatsoever as a result of Vendor'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 District 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 or 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 breach by Vendor giving District a right to terminate the PO.
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 30<sup>th</sup> 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 termination of the rental or lease/purchase. Upon termination, lessor shall have the right to recover any and all amounts then due or which may have accrued up to the date lessor received 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 District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available at [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). 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 the PO or contract or the vendor's obligations, right, title, or interest in or to the same, or any part thereof without written consent of the District. Any attempt to do any of the foregoing without written consent shall be void. The PO or 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. ACCESSIBILITY: Vendor hereby warrants that the products or services to be provided under this agreement comply with California Government Code § 11135 and the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless the Foothill-DeAnza Community College District, the Chancellor's Office of the California Community Colleges, and any California community college using the vendor's products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.
24. EXPENDITURE OF PUBLIC FUNDS: Vendor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
25. CONFIDENTIALITY: In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.