

**CITY OF SAN DIEGO, PURCHASING DIVISION
GENERAL PROVISIONS FOR PROPOSALS
DATED 01/18/2005**



A. DEFINITIONS

1. Addenda - Additional terms or modifications to a Solicitation after original Solicitation was issued.
2. Alternate Proposal - A response to a Solicitation, in addition to a Proposal that meets Specifications, which meets or exceeds the Specifications and offers additional advantages to the City.
3. Amendment - A document, signed by the Purchasing Agent or designee, and the Contractor, which outlines changes to an existing Contract.
4. Announcement - The declaration of the intent to Award a Contract per the Municipal Code.
5. Apparent Successful Proposal or Proposer - The Proposal best meeting the City's requirements which will be awarded the Contract, provided that all conditions subsequent are fulfilled.
6. Award - City's acceptance of the Apparent Successful Proposal.
7. Contract - The agreement between the City and the Successful Proposer which includes the terms and conditions in the Contract Documents and the Successful Proposal.
8. Contract Amount - The prices quoted on the Pricing Page in the Successful Proposal which the City agrees to pay.
9. Contract Documents - The Specifications, Pricing Page, Specific Provisions, and General Provisions, as well as any other documents incorporated by reference in any of these documents.
10. Contract Term - The duration of the Contract as provided in the Contract Documents.
11. Debarment - A prohibition against participation in City Contracts for reasons and grounds specified in the San Diego Municipal Code.
12. Emergency - Reasonably unforeseen circumstances as defined in the Municipal Code, which require the City to change the Contract Terms.
13. Guarantee of Good Faith - A guarantee in the form of a check, bond or deposit required from each Proposer to be used by the City in the event that an Apparent Successful Proposer fails to honor the Terms of the Proposal.
14. Pricing Page - Forms issued by the Purchasing Agent for Proposer to quote Contract Amount.

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15. Procurement Card - City issued credit card.
16. Proposal - An offer to enter into a Contract with the City for goods or services at a specified amount subject to the terms and conditions of the Contract Documents.
17. Proposal Closing - The date and time when all Proposals must be received by the Purchasing Agent in order to be considered for Award.
18. Proposed Equivalent - Goods proposed by a Proposer to be equal to those described in the Specifications.
19. Proposers' List - A list or record maintained by the Purchasing Agent setting out the names and addresses of suppliers of goods and services from which Proposals can be solicited.
20. Protest - A complaint by an unsuccessful Proposer about a City action or decision related to the selection of the Apparent Successful Proposer prepared in compliance with the provisions of the San Diego Municipal Code.
21. Purchase Order - The Purchasing Agent's form used to formalize a purchase transaction which is necessary prior to any services or goods being provided pursuant to the Contract.
22. Solicitation — Document inviting prospective Proposers to submit Proposals for goods or services.
23. Specific Provisions - Additional provisions which are unique to the particular type of Contract being awarded.
24. Specifications - A description of the physical and functional characteristics or the nature of a supply or service and the performance requirements.
25. Suspension - A prohibition against submitting Proposals on City projects for a temporary period of time as specified in the San Diego Municipal Code.

B. PROPOSAL REQUIREMENTS

1. Binding Offer

Pursuant to the Notice to Proposers advertised in the official City newspaper and/or the Solicitation issued by the City, the Proposer's offer to furnish the City of San Diego (City) with the goods or services described in the Proposal is binding at the price stated (Contract Amount), subject to further negotiations as outlined in these General

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Provisions, and is subject to all of the terms and conditions of these General Provisions, all Contract Documents, as well as the City of San Diego Charter and Municipal Code.

2. Delayed Receipt of Proposals or other submissions, Modifications, or Withdrawals
 - a. Proposals or other submissions, modifications, or withdrawals received after the exact hour and date specified for receipt will not be considered unless: (1) received before the City's Announcement of the Contract Award; and (2) the City determines that the Proposer was not responsible for the delay.
 - b. The time of mailing of proposals or other documents, modifications, or withdrawals submitted by registered or certified mail shall be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail, unless the Proposer furnishes evidence from the post office station of mailing which establishes an earlier time.

3. Priority of Contract Provisions

The Contract Documents include, in the order of priority and specificity, Specifications, Specific Provisions and these General Provisions. When conflicts arise, the most specific provision will control. Therefore, the legal effect of the Contract Documents is in the order stated above. In addition to the Contract Documents, Proposer is bound by all provisions of the San Diego Municipal Code, San Diego Charter and all applicable state statutes, including the California Commercial Code.

4. Quality

Unless otherwise required in the Specifications, all goods furnished shall be new and the best of their kind.

- a. Any reference to a specific brand name is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality or reliability standards and requirements of the City, thereby incorporating these requirements by reference within the Specification. An equivalent ("or equal") may be offered by the Proposer in response to a brand name reference (Proposed Equivalent). The City may consider the Proposed Equivalent after it is subjected to testing and evaluation which must be completed prior to Award of the Contract. If the Proposer offers an item of a manufacturer or vendor other than that specified, Proposer must identify maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation.
- b. The City has complete discretion in determining whether a Proposed Equivalent will satisfy its requirements. It is the Proposer's responsibility to provide, at its expense, any product information, test data or other information or documents the City requests in order to properly evaluate or demonstrate the acceptability of the Proposed

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Equivalent, including independent testing or evaluation at qualified test facilities or destructive testing.

5. Quantities

The estimated quantities provided by the City are not guaranteed. These quantities are listed for information purposes only. The quantities may vary depending on the demands of the City. Any variations from these estimated quantities shall not entitle the Proposer to an adjustment in the unit price or to any additional compensation.

6. Non-Collusion

The Proposer warrants that: (1) this Proposal is genuine and not sham or collusive, or made in the interest of or on behalf of any person, firm or corporation not therein named; (2) the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a sham Proposal, or any other person, firm or corporation to refrain from submitting a proposal; and (3) the Proposer has not in any manner sought by collusion to secure any advantage over the other Proposers.

7. Litigation Warranty

Unless the Proposer specifically indicates otherwise in the Proposal, submission of a Proposal is deemed a warranty by Proposer that no judgments or awards have been entered against Proposer and that it is not currently involved in litigation or arbitration concerning Proposer's provision of services or goods similar to those which are the subject of this Contract. If Proposer discloses that such a warranty cannot be made, the City will require Proposer to furnish the City with a performance bond executed by a surety company authorized to do business in the State of California and approved by the City in a sum equal to one hundred percent (100%) of the Contract Amount.

8. Royalties, Licenses and Patents

Unless otherwise specified, the Contractor shall pay all royalties, license and patent fees. In submitting a Proposal, the Contractor warrants that the materials to be supplied do not infringe upon any patent, trademark or copyright and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City from all loss or damages, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against the City, the Contractor or those furnishing material to the Contractor pursuant to this Contract.

9. Addenda

The Terms of the Addenda shall be considered in evaluating and submitting Proposals. It is the Proposer's responsibility to ensure that any Addenda to a Proposal are downloaded

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from the City's website or otherwise obtained. Failure to respond to any Addenda issued may render a Proposal invalid and result in its rejection.

10. No Proposal

In order to remain on the Proposers' List, a Proposer may submit a "NO PROPOSAL" response by the stated Proposal Closing Date.

11. Time of Essence

Time is of the essence for each provision of the Contract Documents, unless specified otherwise.

12. Proposal Results

No Proposal results can be obtained until the City's Announcement of the proposal best meeting the City's requirements. To obtain Proposal results, either: (1) email contact person listed on cover page to request the Proposal results to be emailed to Proposer; (2) provide a self-addressed stamped envelope, referencing Proposal number, to be mailed Proposal tabulation; or (3) visit the Purchasing Division to review Proposal tabulation. Due to time constraints, Proposal results cannot be released over the phone.

C. PROPOSAL CONTENT

1. Exceptions to Contract Documents

Proposer shall carefully examine all Contract Documents and regulations relating to the goods or services to be furnished and shall be bound by same unless exceptions are proposed in writing and said exceptions are accepted by the City in writing. Any exceptions to the City's Contract Documents submitted by Proposer are deemed rejected and the City may reject Proposer's Proposal as non-responsive or consider the Proposal without Proposer's proposed exceptions. If after Award of Contract, Proposer attempts to provide materials or services subject to new or additional terms or conditions, unless mutually agreed between City and Contractor in accordance with Section H.3 of these provisions, they too shall be considered void and City may terminate the Contract.

2. Forms

In order for a Proposal to be accepted, it must be submitted on the forms, if any, provided by the Purchasing Agent.

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3. Prices Submitted or Corrected

All prices and notations must be written in ink or typed. Responses must be free of erasures. Corrections must be initialed in ink by the person signing the Proposal.

4. Discounts

Prompt payment discounts of twenty (20) days or more will be considered in the evaluation of Proposals. Discounts of less than twenty (20) days will be taken at the time of payment when applicable, but will not be considered in the evaluation of Proposals. Discount is taken based on the date of the payment check. Time will be computed from the date of delivery at destination or acceptance by City, or the date supplied to the carrier when acceptance is at the point of origin, or from the date a corrected invoice is received, whichever is later.

Any discount offered other than for prompt payment should be included in the net price quoted, rather than shown as a separate item. Any discount shown separately will be adjusted on the Purchase Order.

5. Items Offered

If the item in the Specifications has a trade name, brand, catalog, manufacturer, and/or product number, Proposer shall state the applicable trade name, brand, catalog, manufacturer, and/or product number in the Proposal.

6. Alternative Proposals

If Proposer has offered goods or services which are responsive, Proposer may thereafter include with the Proposal any additional proposals or alternative goods that are not "equals" but that Proposer believes may meet or exceed City's requirements and that offer City additional advantages or benefits. City reserves the right to evaluate and accept or reject such Alternative Proposals as though they were part of the original Specifications without advertising for further Proposals or to re-advertise based on such Alternative Proposals when in the best interests of the City. An Alternative Proposal must be submitted on the same forms provided by the Purchasing Agent, with adequate information for the City to evaluate the costs and benefits.

7. Duration of Offer

By submission of a Proposal, Proposer guarantees that the offer is firm for 90 calendar days, commencing the day following the date of Proposal Closing. If an Award is not made during that period, the Proposal shall automatically extend for another 90 days, unless the Proposer indicates otherwise to the contact person listed on the cover page of the Proposal in writing thirty days prior to the then current 90 day period.

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8. Delivery

Delivery shall be made in accordance with the Contract Documents. If a delivery date is not specified by the City, Proposer shall state a delivery date or number of days, including Saturdays, Sundays and holidays, after receipt of order. The City, in its sole discretion, may extend the time for delivery in accordance with Section F.4 of these General Provisions. The City may order, in writing, the suspension, delay, or interruption of delivery of goods or services.

9. Prices

- a. Unless called for in the Specific Provisions, no escalation factor is allowed. If escalation is allowed, the Contractor must notify the City in writing in the event of a decline in market price(s) below the Proposal Price and the City will make an adjustment in the Contract Amount or elect to re-solicit.
- b. Unless the Proposer clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire Proposal, any difference between the unit price correctly extended and the total price shown for all items offered shall be resolved in favor of the unit price.

10. Confidential Information

Any information submitted with a Proposal is a public record subject to disclosure unless a specific exemption applies. If a Proposer submits information clearly marked confidential or proprietary, it will be protected and treated with confidentiality to the extent permitted by law. However, it will be the Proposer's obligation and expense to defend any legal challenges seeking to obtain said information.

11. Signature

All Proposals must be signed with the firm name as indicated. A Proposal by a corporation must be signed by a duly authorized officer, employee or agent, with his or her title. The representative signing on behalf of a corporation, partnership, sole proprietorship, joint venture or entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, sole proprietorship, joint venture, or entity and agrees to hold the City harmless, if it is later determined that such authority does not exist. An original signature, in ink, is required. Copies and facsimiles are not acceptable.

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12. Guarantee of Good Faith

If a Guarantee of Good Faith is required, any of the following may be submitted in the amount specified made payable to the City: a certified check; a bank or postal money order; or a bid bond executed by a corporation authorized to issue surety bonds in the State of California. Failure to submit an acceptable Guarantee of Good Faith with the Proposal will automatically render it void.

13. Faithful Performance Bond

The Apparent Successful Proposer may be required to furnish the City with a surety bond conditioned upon the faithful performance of the Contract. This may take the form of a bond executed by a surety company authorized to do business in the State of California and approved by the City, an endorsed Certificate of Deposit, or a money order or a certified check drawn on a solvent bank. The bond shall be in a sum equal to 25 percent of the Amount of the Contract, unless stated differently in the Specific Provisions. The City may file a claim against such bond or deposit in the event the Contractor fails or refuses to fulfill all terms and conditions of the Contract.

14. Taxes

The City will furnish Exemption Certificates for Federal Excise Tax. The City is liable for State, City, and County Sales Taxes. Do not include this tax in the Amount proposed; it will be added to the net amount invoiced. All or any portion of the City Sales Tax returned to the City will be considered in the evaluation of Proposals.

15. Taxpayer Identification Number

I.R.S. regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide services or products to the City. This information is necessary to complete Form 1099 at the end of each tax year.

In order to comply with I.R.S. regulations, the City requires each vendor to provide a Form W-9 prior to Award of Contract. Failure to provide a completed Form W-9 within ten (10) business days of the City's request may result in a Proposal being declared non-responsive and rejected.

D. PROPOSAL MODIFICATION OR WITHDRAWAL

1. Verify Quotations

Proposer shall verify all prices and extensions before submitting a Proposal. Withdrawal or correction will not be permitted except as provided below.

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2. Modification or Withdrawal of Proposals

Prior to the exact hour and date set for Proposal Closing, Proposals may be modified or withdrawn by providing written notice by either the Proposer, or an authorized representative. Telephonic withdrawals or modifications are not permitted.

3. Mistake in Proposal

- a. After the Proposal Closing the Purchasing Agent may reject any and all requests for correction of mistakes. A modification of the Proposal will only be considered as provided in subsection b below. The Purchasing Agent's decision is final.
- b. A request by the Apparent Successful Proposer to modify their Proposal in order to correct a mistake may be considered when: (1) the mistake in the Proposal is clearly evident and provable; (2) the City has not announced the Apparent Successful Proposer; (3) no Purchase Order has been issued; and (4) the Proposal remains the best Proposal after the correction is made. If, as a result of the correction, the Proposer is no longer the Apparent Successful Proposer, the City will award to the newly established Apparent Successful Proposer.

E. EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

1. Evaluation of Proposals

- a. Award will be made to the Proposal which best meets the City's requirements (Apparent Successful Proposer) based upon the following: Proposer's past performance, total cost, most economic by cost analysis, life cycle costs, warranty, quality, maintenance cost, durability, the operational requirements of the City and any other factors which will result in the optimum economic benefit to the City.
- b. The City may require additional written or oral information from Proposers to clarify responses. Unless the Proposer clearly specifies otherwise, the City may elect to award more than one Contract, by awarding separate items or groups of items to various Proposers. Awards will be made for the items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.
- c. The City may elect to waive informalities, technical defects and minor irregularities in Proposals and may reject all Proposals when to do so is in the best interest of the City.

2. Announcement of Award

The City will inform all Proposers of its Intent to Award a Contract in writing.

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3. Protests

If an unsuccessful Proposer wants to dispute the Award, the Protest must be submitted in writing to the Purchasing Agent no later than ten calendar days after Announcement of the Apparent Successful Proposer, detailing the grounds, factual basis and providing all supporting information. Failure to submit a timely written Protest to the Purchasing Agent will bar consideration of the Protest.

4. Award of Contract

Based on the Proposal submitted and subsequent negotiations and submission of a Best and Final Offer, if applicable, the City and Contractor will sign the Contract furnished by the City.

F. STANDARD OF PERFORMANCE

1. Industry Standard

Services performed and goods provided, must be acceptable to the City, in strict conformity with all instructions, conditions, and terms of the Contract Documents and performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Contractor of responsibility for complying with all applicable laws, codes, and good business practices.

2. Inspection and Acceptance

Inspection and acceptance will occur at destination unless specified otherwise, and will be made by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of the City.

3. Responsibility for Lost or Damaged Shipments

Risk of loss or damage to goods prior to the time of their receipt and acceptance by the City is upon the Contractor. The City has no obligation to accept damaged shipments and reserves the right to return, at the Contractor's expense, damaged goods even though the damage was not apparent or discovered until after receipt.

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4. Delay

- a. The Contractor shall immediately notify the City in writing if there are, or it is anticipated, that there will be a delay in performance. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay is material, the City may terminate this Contract as provided in Section G.2.
- b. If delays in the performance are caused by unforeseen events beyond the control of the parties, such delay may entitle the Contractor to a reasonable extension of time, but such delay shall not entitle the Contractor to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor or other specific reasons agreed to between the City and the Contractor; provided, however, that: (a) this provision shall not apply to a delay caused by the acts or omissions of the Contractor; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Contractor to an extension of time unless the City has received, in a timely manner, documentary proof satisfactory to City of the Contractor's inability to obtain materials, equipment, or labor.

5. Warranties

- a. All goods and services provided under the Contract shall be warranted by Contractor and/or manufacturer for at least twelve (12) months after Acceptance by City, except automotive equipment, which will be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless stated differently in the Specific Provisions.
- b. Contractor shall be responsible to the City for all warranty service, parts and labor. Contractor is responsible for ensuring that warranty work is performed at a facility acceptable to City and that services, parts and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself.

6. Compliance with All Laws and Codes

Performance under this Contract shall comply with all applicable laws of the United States of America, the State of California, the County of San Diego, the City, as well as all applicable City policies.

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7. Consequences of Violations of Law

Any acts or omissions of Contractor in violation of federal, state, or municipal law, City Charter, City Policies or regulations [regarding anti-competitive practices, unfair trade practices, collusion, gratuities, kickbacks, contingent fees, contemporaneous employment, or similar violations creating an unfair influence on the public solicitation and award process pertaining to this Contract] shall void this Contract. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, and is subject to Suspension and Debarment.

8. Conflict of Interest

By submission of a Proposal, the Proposer warrants that there has been no direct, or indirect involvement in the procurement process pertaining to this Proposal by a City employee, or member of the employee's immediate family, or elected or appointed member of City government, with a financial interest or other personal interest incompatible with the proper discharge of their official duties or an arrangement concerning prospective employment with Proposer. In the event such a conflict occurs, it must be reported immediately to the Purchasing Agent. A breach of this warranty may render this Contract void with remedies including, but not limited to recovery of all direct and indirect damages, Suspension or Debarment.

9. Drug Free Workplace

All City projects are subject to Council Policy No. 100-17, Drug-Free Workplace. This policy requires that all City construction contractors, consultants, grantees, and providers of non-professional services provide a drug-free workplace in accordance with the provisions contained therein. The Drug-Free Workplace Policy is available online at www.sandiego.gov/purchasing or via request from the Purchasing Division by calling (619) 236-6000. By submitting a Proposal, the Proposer represents that they have read and understood the meaning, intent, and requirements of said policy; and agree that said policy is incorporated as part of this Proposal; certify that they have a drug-free workplace program in place that complies with said policy; and that subcontractor agreements contain language which indicates the subcontractor's agreement to comply with this policy.

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10. American with Disabilities Act

- a. Every person or organization awarded a contract, lease, or grant by the City must agree that they are aware of and will comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the federally mandated Americans with Disabilities Act (ADA). Contractors and subcontractors will be individually responsible for their own ADA program.
- b. In compliance with Council Policy 000-03, adopted by Resolution No. 279130, sign language or oral interpreting services are available at **pre-proposal** meetings and Proposal Closings with a five (5) business day notice to Purchasing Agent at (619) 236-6000 or email at Purchasing@san Diego.gov.

11. Equal Employment Opportunity and Nondiscrimination

- a. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall also ensure that their subcontractors comply with the City's Equal Employment Opportunity Program. Contractor agrees to be bound by the City Equal Opportunity Ordinance (Municipal Code Chapter II, Article 2, Division 27). Contractor shall submit a Work Force Report or an Equal Employment Opportunity Plan, within five (5) days of being notified by the Purchasing Agent. For questions regarding the City's Equal Employment Opportunity Program, contact the Equal Opportunity Contracting Office at (619) 533-4464.
- b. Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.
- c. Proposer shall include in the Proposal a list of all instances within the past ten (10) years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

Upon the City's request, Contractor agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of names of all subcontractors, vendors, and suppliers that Contractor has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply Contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3401 - 22.3417). Contractor understands and agrees that violation of this clause shall be

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considered a material breach of the Contract and may result in termination, Debarment, or other sanctions. This language shall be included in all contracts with subcontractors related to this Contract.

12. Cooperative Environment

Contractor shall be responsible for working in harmony with all others involved with this Contract. Employees and agents of Contractor shall, while on the premises of the City, comply with all City rules and regulations.

G. DISPUTES AND TERMINATION

1. Disputes

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract shall be decided by the Purchasing Agent. The decision of the Purchasing Agent is final and conclusive unless, within thirty days from the date of receipt of such decision, the Contractor mails or otherwise furnishes to the Purchasing Agent a written appeal addressed to the City Manager. The decision of the City Manager, or his duly authorized representative for the determination of such appeals, is final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Purchasing Agent's decision.

2. Termination for Default

- a. The City may, by written notice of default to the Contractor, terminate the whole, or any part of, this Contract, provided that Contractor fails to cure such default within ten days after receipt of such notice. The following are considered defaults:
 - (1) Failure to make delivery of the goods or to perform the services within the time specified; or
 - (2) Failure to perform any of the obligations of this Contract, or to make progress in performance which may jeopardize full performance.

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- b. In the event the City terminates this Contract, in whole or in part, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, goods or services and the Contractor shall be liable to the City for any excess costs. The Contractor shall also continue performance to the extent not terminated.

3. Termination for Bankruptcy or Assignment for the Benefit of Creditors

If the Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Contractor, immediately cancel and/or terminate this Contract, and terminate each and every right of the Contractor, and any person claiming any rights by or through the Contractor. The rights and remedies of the City enumerated in this section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Contract. Nor does this waive or deny any right or remedy, at law or in equity, existing as of the date of this Contract or hereinafter enacted or established, that may be available to the City.

4. Termination for Convenience

The Purchasing Agent, by written 30 day notice, may terminate this Contract, in whole or in part, when it is in the best interest of the City. Contractor shall be compensated in accordance with auditable costs for services or products provided prior to notification of termination.

5. Annual Appropriation of Funds

- a. Multi-year Contracts are subject to annual appropriation of funds by the City Council. Purchase Orders are funded when issued, so are not subject to any subsequent appropriation of funds. All goods and services will be ordered by means of a Purchase Order or through a Procurement Card transaction.
- b. In the event sufficient funds are not appropriated for the next fiscal year, the Contract may be terminated at the end of the current fiscal year. The City shall not be obligated to make further payments. In the event of termination or reduction of services or quantity of goods, Contractor shall be compensated in accordance with auditable costs for services or products provided prior to notification of termination.

6. Debarment Proceedings

During Debarment proceedings Contractor may be suspended. Proceedings may result in Debarment of a Contractor for a period of not more than 3 years or it may be permanent as provided in Municipal Code Sections 22.0800, et seq.

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H. GENERAL CONTRACTUAL OBLIGATIONS

1. Indemnification and Hold Harmless Agreement

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Contractor, or the Contractor's employees, agents, and officers, arising out of performance involving this Contract, the Contractor agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Contractor, its employees, agents or officers, or any third party. The Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

2. Insurance

- a. The City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insured in all policies and coverage as required in the Specific Provisions. The City's additional insured status must be reflected on appropriate additional endorsement form which shall be submitted to the City for approval.
- b. All policies must have a thirty-day non-cancellation clause, giving the City thirty days prior written notice in the event the policy is canceled. Policies can not be materially changed without thirty calendar day's prior written notice to the City by certified mail.
- c. The requisite policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement with shall be submitted to the City for approval.
- d. At the end of each Contract year, the City may review insurance and bond coverage to determine if a change is required based on a risk assessment, Contractor performance and the availability and affordability of coverage.

3. Contract Modifications

The Purchasing Agent may at any time, by written order, and without notice to the sureties, amend the Contract or the Purchase Order. If the proposed Amendment will cause an increase or decrease in the cost or the time required for performance, an equitable adjustment shall be included.

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4. Examination and Retention of Records

- a. The Contractor shall retain and maintain all records and documents relating to City Contracts for three years after receipt of final payment by the City or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the City, including the Purchasing Agent or designee.
- b. The Contractor shall make available all requested data and records at reasonable locations within the City or County of San Diego, at any time during normal business hours, and as often as the City deems necessary. If records are not made available within the City or County of San Diego, the Contractor shall pay the City's travel costs to the location where the records are maintained. Failure to make requested records available for audit by the date requested may result in termination of the Contract.
- c. Contractor must include Sections H.4.a. and b. of these provisions in all subcontract documents exceeding \$5,000.

5. Public Agency

Other public agencies as defined by Cal. Gov. Code § 6500 may choose to use the Terms of this Contract, subject to the Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent agreement between the Contractor and another public agency. If agreements are entered into by other agencies and the Contractor, Contractor shall furnish the City with an annual report showing the name of the agencies, contact person and phone number for each agency, and details of goods or services provided, including quantities. This report shall be furnished to the City on the anniversary date of the Award of the Contract.

6. Product Endorsements

Proposer is prohibited from indicating, either directly or by implication, that the City has endorsed its goods or services without prior written authorization by the City.

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7. Invoices

Contractor will be paid monthly, in arrears, for work or materials provided in accordance with the specifications. Billing shall be in accordance with the current Pricing Agreement, allowing for City approved adjustments, if any. Invoices shall be submitted in duplicate with an original and copy clearly identified to the Contract Administrator or designee, at the address specified on the Purchase Order(s). For services, invoices shall be submitted by the 10th of the month following the month in which services were provided, detailing the dates for which services were provided. For materials and equipment, invoices shall be submitted within seven days of the shipment of goods. The invoice shall reference the Purchase Order number, include a description of the work performed by location and/or section or a listing of materials provided, and state the total invoice cost.

If applicable, any extra-ordinary labor charges for services shall be included on the invoice. A description of the extra-ordinary work to include the location/and or section work was performed shall be provided. Contractor must attach written authorization from the Contract Administrator approving **extra-ordinary** work. Failure to do so will result in payment being withheld for such services. The extra-ordinary labor cost shall be as stated on the current Pricing Agreement.

If applicable, for parts delivered, invoices shall list the manufacturer of the part, manufacturer's published list price, percentage discount applied per the Contract's pricing agreement, and the net price to the City as well as item description, quantity, and extension.

8. Procurement Card Transactions

The City may opt to purchase supplies and services via a city-issued Procurement Card. Within 30 days of the City utilizing Procurement Cards as a payment vehicle, the contractor is required to have a credit card reader capable of transmitting Procurement Card transactions at Level 4, which identify the items purchased by the City.

For purchase verification, the City shall receive an itemized receipt and the respective transaction slip.

9. Integration

The Contract Documents fully express all understandings of the parties concerning the matters therein. No verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing in accordance with Section H.3 of these provisions parties.

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10. Severability

The unenforceability, invalidity, or illegality of any provision of the Contract Documents shall not render any other provision unenforceable, invalid, or illegal.

11. Waiver

The failure of the City to enforce a particular condition or provision of this Contract shall not constitute a waiver of that provision or condition or its enforceability.

12. Covenants and Conditions

All provisions in the Contract Documents expressed as either covenants or conditions, shall be deemed to be both covenants and conditions.

13. Headings

All article headings are for convenience only and shall not affect the interpretation of these Contract Documents.

14. Non-Assignment

The Contractor shall not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Contract, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

15. Independent Contractors

The Contractor and any subcontractors employed by the Contractor shall be independent contractors and not agents of the City. Any provisions in the Contract Documents that may appear to give the City any right to direct the Contractor concerning the details of performance, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the City concerning the end results of the performance.

16. Jurisdiction, Venue, and Attorney Fees

The venue for any suit or proceeding concerning Proposals or the Contract Documents, the interpretation or application of any of its Terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

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17. Successors in Interest

This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

18. Notices

Notices under this Contract shall be in writing and shall be considered effective upon personal delivery to the individual listed below or five (5) calendar days after deposit in any U.S. mailbox, first class and addressed to the other party as follows:

For the City of San Diego:

Purchasing Agent
City of San Diego Purchasing Division
1200 3rd Ave Ste 200
San Diego CA 92101-4195

19. Software Licensing

Contractor represents and warrants that the software, as delivered to the City, does not contain any program code, virus, worm, trap door, back door, timer, or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of Licensor-selected conditions, or manually on the command of.

20. Intellectual Property

- a. Contractor understands and agrees that any and all materials and deliverables that are subject to copyright protection that are developed in connection with the performance of this Contract shall constitute a work for hire as that term is defined in the Copyright Act of 1976, as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively to the City, including without limitation all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, Contractor hereby grants, transfers, sells and assigns, free of charge, exclusively to the City, all title, rights and interest in and to said Work, including all copyrights and other intellectual property rights. The Contractor further agrees to execute and deliver to the City a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the City deems necessary to ensure the complete and effective transfer of all rights in Works to the City.

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- b. In accordance with the preceding paragraph, Works developed for the City connection with this Contract are the exclusive property of the City. Contractor agrees to deliver all Works to the City upon completion of the work. Works include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. For information technology procurements Works include but are not limited to executable code, source code, fixes, patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials. Contractor shall be responsible for delivering all Works to the City no later than fifteen (15) working days from the date of final Contract deliverables. In the event the Contractor fails to return all such materials by this deadline and the City desires to use Works again, Contractor shall provide the City with equivalent materials, at its own expense, or reimburse the City, in full, for the cost of developing equivalent materials.
- c. The Contractor represents and warrants that any materials or deliverables, including all Works, provided under this Contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law of equity.