

CITY OF SAN DIEGO

BID/CONTRACT GENERAL PROVISIONS

Please read carefully; these provisions are a part of your bid and any contract

Pursuant to the Notice to Bidders advertised in the official City newspaper, the specifications, bidding instructions, and requirements on file with the City Clerk, and the conditions of the General Provisions herein, and subject to all provisions of the Charter and Ordinances of the City of San Diego (hereinafter referred to as the City), bidders propose to furnish to the City, complete at the prices stated within the bid document, the items or services described therein. The person signing the bid must warrant that the bid 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; that bidders have not directly or indirectly induced or solicited any other bidder to submit a sham bid, or any other person, firm or corporation to refrain from bidding; and that bidders have not in any manner, sought by collusion, to secure any advantage over the other bidders.

In submitting a proposal, bidders agree to the following:

- A. Bidder has carefully examined the specifications and all provisions relating to the items to be furnished or the work to be done and understands the meaning, intent, and requirements thereof and agrees to same; and
- B. Bidder will enter into a written contract and furnish the item(s) or complete the work in the time specified, and in strict conformity with the City of San Diego specifications therefore, for the prices quoted.

1. Forms

The Purchasing Agent will furnish blanks and specifications for all proposals and no bids will receive consideration unless made upon blanks so furnished. Bids must be submitted complete with the specifications as furnished and delivered to City of San Diego Purchasing Division prior to the time set for opening.

2. Prices

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written with ink adjacent thereto; corrections must be initialed in ink by the person signing the bid. Bids shall indicate the unit price extended to indicate the total price for each item bid.

Any difference between the unit price correctly extended and the total price shown for all items bid shall be resolved in favor of the unit price, except when the bidder clearly indicates that the total price for all items bid is based on consideration of being awarded the entire lot and that an adjustment of the total price is being made in consideration of receiving the entire bid.

3. Guarantee of Good Faith

Cash, uncertified personal and company checks, and certificates of deposit are not acceptable as a guarantee of good faith. Each proposal must be accompanied by an unconditional certified check or a bank or postal money order or bid bond executed as surety by a corporation authorized to issue surety bonds in the State of California. Such check, money order, or bond shall be made payable to the City of San Diego and such check, money order, or bond shall be in the amount specified on the "Proposal Form." If the bidder fails to execute the contract within ten (10) days from the date of City's mailing notice that the contract is ready for signature, the City will either award the contract to the next lowest bidder or will reject all bids and call for new bids. The bidder who has failed to execute the contract shall be liable to the City for the sum, not exceeding the amount of said check, money order, or bond, by which the amount of the contract covering the said proposal executed by and between the City and some third party may exceed the amount bid by the original successful bidder. Such portion of said check, money order, or bond, as equals said sum shall be declared forfeited to the City of San Diego and shall be collected and paid to the City of San Diego. The bidder may also be subject to debarment or suspension.

IMPORTANT: Failure to furnish a proper guarantee of good faith with the bid when such is required will automatically void the bid.

4. Items Offered

If the item offered has a trade name, brand, and/or catalog number, such shall be stated in the bid. If the bidder proposes to furnish an item of a manufacturer or vendor other than that mentioned on the face hereof, bidder must specify maker, brand, quality, catalog number, or other trade designation. Unless such is noted on the bid form, it will be deemed that the item offered is that designated even though the bid may state "or equal."

5. Samples

Samples, when required, shall be furnished prior to bid closing date and time or within time specified in the bid. The City reserves the right to reject bids submitted without the required samples and to require samples for alternate bids or items offered as "equals."

6. Alternative Proposals

To be responsive to a bid, bidders must submit a proposal that meets all specific requirements. Bidders may propose "equals" as provided for in accordance with Item 8 of these General Provisions.

Once a bidder has proposed a product which is responsive to the specification, bidder may thereafter include with the bid any additional proposals or alternative products that are not "equals" but that bidder believes can or may meet or exceed City's requirements and that offer City additional advantages or benefits based on the state of the art that were not or could not be contemplated by City when the requirements were prepared. City reserves the right to evaluate and accept or reject such alternatives as though they were part of the original specifications without advertising for further bids or to re-advertise based on such proposed state of the art alternatives when in the best interests of the City. Any awards so made will be based on cost analysis considerations that result in the optimum economic advantage to the City.

7. Expiration of Bid

All bids shall be considered as firm for a period of sixty (60) calendar days, unless otherwise stated in the body of the solicitation, commencing the day following the date of bid closing and expiring at midnight of the last day. The bidder may specify a date that the bid expires, provided the date is specific and is entered on the first page of the Proposal or Request for Quotation.

8. Brand Names

Whenever reference to a specific brand name is made in a proposal, it is illustrative and to be construed as a specification which describes a component that has been tested or evaluated by the City as best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City, thereby incorporating the requirements by reference within the specification. An equivalent ("or equal") may be offered by bidders, subject to testing and evaluation at the option of the City prior to award of bid. The City reserves the sole right to reject a substituted component that will not fulfill requirements. It shall be the sole responsibility of bidders to provide at bidder's expense any product information, test data, and other information or documents the City may require to fully evaluate or demonstrate the acceptability of the offered substitute. Where appropriate, independent testing or evaluation, including destructive testing at qualified test facilities at bidder's expense, may be required as a condition of acceptance.

9. Verify Quotations

Bidders must verify their price quotations prior to bid submission, as withdrawal or correction may not be permitted after the bid has been opened.

10. Delivery

- (a) Bidders shall state delivery terms on the Proposal Form unless already specified, in which case delivery shall be made within the time set forth. Where time is stated in a number of days, it shall include Saturdays, Sundays, and holidays. Delivery is part of the consideration and must be adhered to as specified.
- (b) Bidders will not be held liable for failure to make delivery because of strikes, conscription of property, governmental regulations, acts of God, or any other causes beyond their control, provided a written extension of time is obtained from the City Manager.

11. Firm Prices

Prices on bids shall be firm prices not subject to escalation. In the event the specifications provide for escalation, the maximum limit shall be shown, or the bid shall not be considered. In the event of a decline in market price(s) below the bid price(s), the City of San Diego shall receive the benefit of such decline.

12. Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written or telegraphic notice received prior to the exact hour and date specified for receipt of bid. A bid may also be withdrawn in person by a bidder, or bidder's authorized representative, prior to the exact hour and date set for receipt of bids. Telephone withdrawals are not permitted.

13. Late Bids and Modifications or Withdrawals

- (a) Bids and modifications of bids (or withdrawals thereof, if this solicitation is advertised) received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless (1) they are received prior to contract award and (2) either they are sent by registered mail, or by certified mail, for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, and it is determined by the City that the late receipt was due solely to delay in the mails for which bidder was not responsible, or if submitted by mail, it is determined by the City that the late receipt was due solely to mishandling by the City after receipt, provided that timely receipt is established upon examination of an appropriate date or time stamp (if any) or of other documentary evidence of receipt (if readily available) within the control of the City, or of the Post Office serving it. However, a modification of a successful bid which provides more favorable terms to the City will be considered at any time it is received and may thereafter be accepted.
- (b) The time of mailing of late bids submitted by registered or certified mail shall be deemed to 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 bidder furnishes evidence from the post office station of mailing which establishes an earlier time.

14. Mistake in Bid

- (a) If a bidder discovers a mistake in bid prior to the hour and date specified for receipt of bid, bidder may correct the mistake by modifying or withdrawing the bid in accordance with Items 12 and 13 above.
- (b) If within seventy-two (72) hours of the bid closing and prior to the issuance of a purchase order or a contract, the apparent low and best bidder discovers a mistake in bid of a serious and significant nature which is unfavorable to bidder, bidder may request consideration be given to modifying the bid if it remains the lowest bid or to withdrawal of the bid if the result of the correction of the mistake makes another bidder lowest and best bidder. The mistake must be evident and provable.

The right is reserved by the City to reject any and all requests for correction of mistakes in bids received after the hour and date of the bid closing. The decision of the Purchasing Agent is final as regards acceptance or rejection of requests for correction of bids.

- (c) A mistake in bid cannot be considered once a purchase order or contract is issued.

15. No Bids

If no bid is to be submitted, the blank bid document should be marked "NO BID" and returned to the Purchasing Division office to ensure that bidder's name is retained for future solicitation considerations. A letter or postcard may be submitted in lieu of the blank bid document. If a bidder fails to respond to a reasonable number of bids without returning a "NO BID" notification, the Purchasing Agent reserves the right to exclude the bidder from consideration of future solicitations.

16. Confidential Information

Any information deemed confidential or proprietary should be clearly identified by the bidder as such. It will be protected and treated with confidentiality only to the extent permitted by State law concerning public information. Otherwise the information shall be considered a public record. Any

data to be returned should be so marked and will be returned if not essential to the bid or contract record.

17. Signature

All bids must be signed with the firm name as indicated. A bid by a corporation must be signed by a duly authorized officer, employee, or agent, with his or her title. An original signature is required. Copies are not acceptable.

18. Quality

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

19. Litigation Warranty

Bidders, by bidding, warrant that they are not currently involved in litigation or arbitration concerning the material's or bidder's performance as it relates to the same or similar material to be supplied pursuant to the referenced contract or specification and that no judgments or awards have been made against bidder on the basis of bidder's performance in supplying or installing the same or similar material, unless such fact is disclosed to the City in the bid. Disclosure will not automatically disqualify the bidder, however, the City reserves the right to evaluate bids on the basis of facts surrounding such litigation or arbitration and to require bidder to furnish the City with a surety bond executed by a surety company authorized to do business in the State of California and approved by the City of San Diego in a sum equal to 100 percent of the contract price conditional on the faithful contract performance by bidder in the event the bid is awarded to bidder, notwithstanding the litigation or arbitration.

20. Royalties, Licenses, and Patents

Unless otherwise specified, bidders shall pay all royalties, license, and patent fees. The bidder warrants that the materials to be supplied do not infringe 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 bidder, or those furnishing material to bidder pursuant to the contract with the City.

21. Performance Standards

Performance of work and acceptability of equipment or materials supplied pursuant to any contract or award shall be to the satisfaction of the City.

22. Warranties

- (a) All material, labor, or equipment provided under a contract shall be warranted by manufacturer for a minimum of twelve (12) months after acceptance by the City, except automotive equipment, which will be warranted for a minimum of 12,000 miles or twelve (12) months, whichever occurs first. Greater warranty protection will be accepted. Lessor warranty protection must be indicated by bidder on the bid proposal as an exception.

- (b) Bidders shall be considered the primary party responsible to the City for all warranty service, parts and labor applicable to the goods or equipment provided by bidder under a bid or award, irrespective of whether bidder is an agent, broker, fabricator, or manufacturer's dealer. Bidders shall be responsible for ensuring that warranty work is performed at a local agency or facility convenient to the City and that services, parts, and labor are available and provided to meet the City's schedules and deadlines. The City may require bidders to post a performance bond after contract award to guarantee performance of these obligations. Bidders may establish a service contract with a local agency satisfactory to the City to meet this obligation if bidder does not ordinarily provide warranty service.

23. Addenda

The effect of all addenda to the bid documents will be considered in the bid, and said addenda will be made part of the bid documents and will be returned with them. Before submitting a bid, each bidder shall ascertain whether any addenda have been issued. Failure to cover any such addenda in this bid may render the bid invalid and result in its rejection.

24. Specifications to Prevail

The detailed requirements of the bid specifications shall supersede any specific requirement of these General Provisions, which are in conflict therewith.

25. Faithful Performance Bond

The successful bidder may be required to furnish the City 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 of San Diego, an endorsed Certificate of Deposit, or a money order or a certified check drawn on a solvent bank. The bond shall be for the amount specified in the bid document. Such bond or deposit shall be forfeited to the City in the event the bidder receiving the contract fails or refuses to fulfill the requirements and all terms and conditions of the contract.

26. Taxes

The City is exempt from payment of Federal Excise Tax. Exemption Certificates will be if required. The City is liable for State, City, and County Sales Taxes. Tax should not be included in the bid price. All or any portion of the City Sales Tax returned to the City will be considered in the evaluation of bids. (Note: Upon award of contract, applicable State, City, and County sales tax should be added to the net amount invoiced).

27. Award of Contract

- (a) Bids will be analyzed and award will be made to the lowest and best responsive and responsible bidder whose bid conforms to the solicitation and whose bids are considered to be most advantageous to the City, price and other factors considered. Factors to be considered may include, but are not limited to bidder's past performance, total unit cost, economic cost analysis, life cycle costs, warranty, quality, maintenance cost, durability, operational requirements of the City, and any other factors which will result in the optimum economic benefit to the City.
- (b) The City reserves the right to reject any item or items therein; to waive informalities, technical

defects, and minor irregularities in bids received; and to select the bid(s) deemed most advantageous to the City. The City will, however, consider bids submitted on an "all or nothing" basis if the bid is clearly designated as such.

- (c) The City reserves the right to award one (1) or more contracts on the bids submitted, either by award of all items to one bidder or by award of separate items or groups of items to various bidders, as the interests of the City may require, unless the bidder clearly specifies otherwise in the bid.
- (d) For the purpose of evaluating bids for multiple awards, the sum of seventy-five dollars (\$75.00) is considered to be the administrative cost to the City for issuing and administering each contract awarded under this solicitation, and individual awards will be made for the items and combinations of items which result in the lowest aggregate price to the City, including such administrative cost.
- (e) Upon acceptance by the City of San Diego, the solicitation, bid, proposal, or price quotation and a purchase order issued to the successful bidder within the time specified shall be deemed in a binding contract without further action required by either party. Items are to be furnished as described in the bid and in strict conformity with all instructions, conditions, specifications, and drawings contained in the complete contract.

28. Protests

Unsuccessful bidders may protest the City's selection for award in accordance with Council Policy 000-29. Protests shall be submitted in writing no later than ten (10) calendar days after the selected Bidder or Proposer is announced. Failure to submit a timely protest to the City shall bar consideration of a protest. Protests shall be submitted to the City Department where bids or proposals were submitted.

29. Documentation

Because of time constraints that affect contract performance, all required documents, certificates of insurance, and bonds shall be provided to the City (Attn: Purchasing Division) within ten (10) days following award or date of request by City, whichever is later. Any failure to comply may result in bid being declared non-responsive and rejected, and/or at City's option, the bid bond will be attached for damages suffered.

30. Purchase Orders

All goods and services will be ordered by means of a Purchase Order. The city will not be responsible for articles or services furnished without a purchase order.

31. Discounts

- (a) Prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating bids for award, unless otherwise specified in the solicitation. However, offered discounts of less than twenty (20) days will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
- (b) In connection with any discount offered, time will be computed from date of delivery of the supplies to the carrier when acceptance is at the point of origin, or from date of delivery at

destination when delivery and acceptance is at destination, or from the date the correct invoice or voucher is received in the office by the City of San Diego, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of City check.

- (c) Any discount offered other than for prompt payment should be included in the net price quoted and not included in separate terms. In the event this is not done, the City reserves the right to accept the discount offered and adjust prices accordingly on the Purchase Order.

32. Seller's Invoice

Invoices shall be prepared and submitted in duplicate to "Ship-to" address specified on the Purchase Order. Separate invoices are required for each Purchase Order. Invoices shall contain the following information: Purchase Order number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price, and extended totals.

33. Inspection and Acceptance

Inspection and acceptance will be at destination unless specified otherwise and will be made by the City department shown in the shipping address or other duly authorized representative of the City. Unit delivery and acceptance, and after any rejection, risk of loss, will be on the bidder unless loss results from negligence of the City.

34. Lost and Damaged Shipments

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

35. Late Shipments

Bidders are responsible for notifying the City department receiving the items and the Purchasing Agent of any late or delayed shipments. The City reserves the right to cancel all or any part of an order if the shipment is not made as promised.

36. Compliance with Industrial Safety Codes

All equipment furnished shall, where applicable, conform with the Safety Orders of the California Division of Industrial Safety.

37. Inspection of Repairs by City

Whenever the City is obligated to reimburse bidder for repairs to leased equipment, bidder must notify the City representative and allow inspection of damaged components before closing up casings or engines. No billings for repairs will be accepted in the absence of compliance with this provision, unless waived by the City.

38. Waiver

The failure of the City to enforce a particular condition or provision of any contract awarded by the Purchasing Division shall not constitute a waiver of that provision or condition or its enforceability by the City.

39. Consequences of Violations of Law Regarding Anti-Competitive Business Practices or Unfair Trade Practices

Any acts or omissions of bidder in violation of federal, state, or municipal law, the City Charter, or City policies and regulations regarding anti-competitive practices, unfair trade practices, collusion, contingent fees, gratuities, kickbacks, contemporaneous employment, or similar violations creating an unfair influence on the public bidding and award process pertaining to a contract or proposal may void the contract. In addition to all other remedies or damages allowed by law, bidder shall be liable to the City for all damages the City thereby suffers or incurs, including costs for substitute performance, and shall be subject to debarment.

40. Conflict of Interest

No City employee, member of the employee's immediate family, or elected or appointed member of City government may participate directly or indirectly in the procurement process pertaining to a bid if they:

- (a) Have a financial interest or other personal interest which is incompatible with the proper discharge of his or her official duties in the public interest or would tend to impair his or her independence, judgement or action in the performance of official duties.
- (b) Are negotiating for or have an arrangement concerning prospective employment with the bidder.

Bidders warrant to the best of their knowledge that the submission of the bid will not create such conflict of interest. In the event such a conflict occurs, the bidder is to report it immediately to the Purchasing Agent. For breach or violation of this warranty, the City shall have the right to annul the contract without liability, at its discretion, and bidder may be subject to damages and/or debarment or suspension.

41. Advertisements, Product Endorsements

City employees and agencies or organizations funded by the City of San Diego are prohibited from making endorsements, either implied or direct, of commercial products or services without written approval of the City Manager.

42. City Provisions to Prevail

Except as noted in the specifications, the City's standard General Provisions shall govern any contract award. Any standard terms and conditions submitted by bidder shall not be acceptable to the City unless expressly assented to by the City by separate document. The City reserves the right to reject a bid as non-responsive, to consider the bid without bidder's standard terms and conditions, or to require bidder to delete reference as a condition of bid evaluation or award. If after award of contract, bidder (contracted vendor) provides materials or services accompanied by new or additional standard terms or conditions, they too shall be considered void and the City may require deletion thereof as a further condition of performance by vendor. To the extent not otherwise provided for by the contract documents, the California Commercial Code shall apply.

43. Amendments and Modifications

The Purchasing Agent may make a modification to the contract or an amendment to the Purchase Order within the general scope of the contract at any time by a written order and without notice to the sureties in (1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the City in accordance therewith, (2) method of shipment or packing, and (3) place of delivery. If any such change causes an increase or decrease in the cost or the time required for performance of the contract, whether changed or not changed by any such order, an equitable adjustment shall be made by written modification of the contract or amendment to the Purchase Order. Any claim by the bidder for adjustment under this clause must be asserted within thirty (30) days from the date of bidder's receipt of the notification; however, the Purchasing Agent, if he/she decides that the facts justify it, may receive and act upon any such claim if asserted prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of these provisions entitled "Disputes." However, nothing in this clause shall excuse the bidder from proceeding with the contract as changed.

44. Disputes

Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce this decision to writing and mail or otherwise furnish a copy thereof to the bidder. The decision of the Purchasing Agent shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, the bidder mails or otherwise furnishes to the Purchasing Agent a written appeal addressed to the City Manager. The decision of the City Manager, or his/her duly authorized representative for the determination of such appeals, shall be final and conclusive. In connection with any appeal proceeding under this clause, the bidder shall be afforded an opportunity to be heard and to offer evidence in support of his or her appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the Purchasing Agent's decision.

45. Termination for Default

- (a) The City of San Diego may, subject to the provisions of paragraph (c) below, by written notice of default to the bidder, terminate the contract in whole or in part in any one of the following circumstances:
 - (1) If a bidder fails to make delivery of the supplies or to perform the services within the time specified in the Contract, or any extension thereof; or
 - (2) If the bidder fails to perform any of the other provisions of the contract or fails to make progress as to endanger performance of the contract in accordance with its terms and in either of these two (2) circumstances does not cure such failure within a period of ten (10) days after receipt of notice from the Purchasing Agent specifying such failure.
- (b) In the event the City terminates a contract in whole or in part as provided in paragraph (a) of this clause, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those so terminated, and the bidder shall be liable to the City for any excess costs for such similar supplies or services. The bidder shall also continue the performance of this contract to the extent not terminated under the provisions of this clause.

- (c) Bidders shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the bidder. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the City in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the bidder.
- (d) If, after notice of termination of a contract under the provisions of this clause, it is determined for any reason that the bidder was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the bidder shall be the same as if notice of termination for convenience had been issued pursuant to such clause.

46. Termination for Convenience

The Purchasing Agent, by written notice, may terminate a contract, in whole or in part, when it is in the best interest of the City. If the contract is for supplies and is so terminated, the bidders shall be compensated in accordance with their auditable costs to point of notification of termination. To the extent that the contract is for services and is so terminated, the City shall be liable only for payment in accordance with the payment provisions of the contract for the actual services rendered to the effective date of termination.

47. Examination of Records

- (a) If a contract exceeds five thousand dollars (\$5,000), the bidder agrees that the City Auditor and Comptroller of the City of San Diego, or any of his/her duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the bidder involving transactions related to the contract.
- (b) Bidders agree to include the clause in (a) above in all their subcontracts hereunder, except Purchase Orders not exceeding five thousand dollars (\$5,000).

48. Debarment or Suspension

After reasonable notice to the person or business and reasonable opportunity for that person to respond, the Purchasing Agent, after consulting with the City Attorney, may recommend to the City Council that the person or business be debarred or removed from consideration for future award of contracts. The debarment or suspension shall be for a period of not more than three (3) years. Causes for debarment include the following:

- (a) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City bidder.
- (b) Violation of contract provisions of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action, including:

- (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract,
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the bidder shall not be considered to be a basis for debarment, or
 - (3) Two (2) or more claims of computational error in bid submission within a two (2) year period.
- (c) Any other cause the Purchasing Agent, in consultation with the City Attorney, deems to be so serious and compelling, including debarment by another governmental entity, as to affect responsibility as a City bidder.

A bidder may be permanently debarred for the following causes:

- (1) Violation of City Charter Section 97 regarding collusion in bidding,
 - (2) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a contract or subcontract with the City of San Diego or in the performance of such contract or subcontract, or
 - (3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals.
- (d) Permanent debarment by another governmental entity.

49. Labor Practices

Bidders shall comply with all Federal and State Laws, and City Ordinances where applicable, relating to fair labor practices and discrimination in the employment of persons.

50. Insurance

Unless otherwise provided, bidder shall cause the City to be named as an additional insured on commercial liability and/or product liability insurance concerning bidder's performance, products, or equipment in amounts, scope, and duration as may be required by the Purchasing Agent. Bidder shall provide evidence of Workers' Compensation Insurance covering employees.

51. Liability and Indemnification

Bidders agree to defend, indemnify, protect, and hold the City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to bidder's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of bidder and its agents, officers, or employees in performing the work or services or supplying the materials or equipment as specified in the contract, and all expenses of investigating and defending against same. However, the bidder's duty to indemnify and hold harmless shall not include any claims or

liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, or employees. This shall not prejudice the right of the City to appear in such suit, participate in the defense, and take such actions as may be necessary to protect the interests of the City.

52. Equal Opportunity Policy

The City of San Diego will not discriminate with regard to race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age in the award of contracts.

53. Annual Appropriation of Funds

Multi-year term supply and service contracts and leases are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase Orders are funded when issued; therefore, they are current expense items and are not subject to any subsequent appropriation of funds.

In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term, and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the City shall not be obligated to make further payments beyond the then-current original or renewal term. The City will provide notice of its inability to continue the lease or contract at such time as the Purchasing Agent is aware of the non-appropriation of funds. However, failure to notify does not renew the term of the lease or contract. If a lease is canceled, the events of default will occur as described in the lease and/or Item 45 of these General Provisions. The City has no monetary obligation in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract except to the extent of the Purchase Orders already issued.

54. Bid Results

To obtain bid results, bidder is requested to either (1) attend bid opening, (2) provide a self-addressed, stamped envelope, referencing bid number, and bid tabulation will be mailed to bidder upon verification of extensions, or (3) visit the Purchasing Division no sooner than three (3) working days after bid opening to review bid tabulation. Due to time constraints, bid results **cannot** be provided over the phone.