



Standard Instructions and Conditions for Invitations to Bid (ITBs), Requests for Proposals (RFPs), Requests for Quotations (RFQs), Purchase Orders (POs), and Contracts

To the extent that any standard instruction or condition set forth below conflicts with instructions, conditions, or terms specified in any other area of this ITB, RFP, RFQ, PO, or Contract, the language in the other area of the ITB, RFP, RFQ, PO, or Contract shall prevail.

Note: The reference to “Bids” in the following paragraphs applies to submittals in response to ITBs, RFPs, and RFQs; and the reference to “Contracts” includes Purchase Orders (POs) and Agreements. The term “Vendor” shall include “Contractor.”

SECTION I Applicable to Bids only.

1. PREPARATION OF BIDS:

- 1.1. Electronic Submission. The District requires that quotes be submitted electronically on the PlanetBids e-procurement system at <https://pbsystem.planetbids.com/portal/24809/portal-home>.
 - 1.1.1. All bids are secure and may not be accessed until the date and time indicated in this RFQ. Bidders may modify or withdraw any quote prior to the bid close. It is the sole responsibility of the Bidder to ensure its quote is submitted before the closing date and time and the District is not responsible for any late or incomplete submissions due to any technical issues that may be encountered on the website. There is no cost to the Bidder to register, receive or submit electronic quotes using PlanetBids.
- 1.2. Paper Bids. All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing the Bid.
- 1.3. Brand names and numbers are for reference only unless otherwise stated in the specification. Whenever an item is described by using a brand/trade name of a manufacturer and/or model number it is intended that the words, “or equal” apply. “Or Equal” means any other brand that is equal or equivalent to the named brand in meeting the specific operational design, performance, maintenance, quality and reliability requirements of District as determined in the District’s sole discretion. Bids on equal items will be considered provided the Bid clearly describes the article offered, samples are provided when requested, and the District judges it to be equal in quality and performance.
 - 1.3.1. 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 manufacturers data sheets, product literature must be attached to the Bid to allow verification that the requested product meets or exceeds all specifications as listed in the bid document. Bidder must list each product specification and provide a cross-reference showing where each specification can be verified with the information provided.
- 1.4. Questions and Answers. All questions are to be addressed via PlanetBids to the responsible Buyer by the Questions Deadline. Answers to questions submitted through and answered via PlanetBids shall be considered addenda to the bid. Oral interpretations or clarifications will be without legal effect. Bidders shall not contact or ask questions of any other District employee or person involved with the development of the specifications or requirements of the bid. Failure to observe this requirement shall render the bid submitted as non-responsive.
- 1.5. State price on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.

- 1.6. The District will not consider prompt payment discount terms that require payment in less than ten (10) days.
- 1.7. Stated prices must be free on board “f.o.b. destination”, freight prepaid and allowed. All applicable charges for freight, shipping, or handling must be included in the stated prices.
- 1.8. Unless the bid form requires otherwise, District shall make payment to Vendor within thirty (30) days from the date of delivery and acceptance of the Contract goods or services, or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.
- 1.9. Time of delivery is a part of the Bid and must be adhered to. When applicable, 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.
- 1.10. All Bids must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- 1.11. Cost of bid preparation and participation in the bidding process shall be borne by the bidder.
- 1.12. The District may designate incomplete Bids as non-responsive.

2. SUBMISSION OF BIDS:

- 2.1. For Formal Bids, 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 via electronic submission through the District bid portal.
- 2.2. Bid modifications or corrections thereof received after the closing time specified will not be considered. Late Bids shall be returned to the bidder unopened.
- 2.3. EXCEPTIONS:
 - 2.3.1. Late responses to RFQs may be considered as long as other quotes submitted have not been publicly read or discussed.
 - 2.3.2. RFP responses and modifications or corrections thereof may be considered after the closing time specified at the discretion of the District’s Director of Purchasing by waiver of informalities, minor irregularities, or technical defects, as the interest of the District may require.
- 2.4. By submitting the bid, the bidder’s submitted bid constitutes the bidder’s offer to provide the District the item(s) specified at the quoted price(s) on the terms and conditions set forth in the bid solicitation package including this document.

3. BONDS:

A payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) pursuant to California Civil Code sections 9550-9566.

4. FAILURE TO BID:

If you do not quote, return bid sheet and state reason, otherwise your name may be removed from future bid opportunities.

5. 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.

6. TIE BIDS:

All other factors being equal, the Contract shall be awarded to the Vendor that has a Santa Clara County business or local/regional 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.

7. 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 instructions 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.

8. IRAN CONTRACTING ACT:

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more to the District, the Bidder must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

9. AWARD OF CONTRACT:

- 9.1. 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.
- 9.2. Bids are subject to acceptance at any time within ninety (90) calendar days after opening unless otherwise stipulated in Bid.
- 9.3. The District reserves the right to reject any or all Bids and to waive minor irregularities in Bids received.

10. DISCLOSURE OF BID INFORMATION:

Unless otherwise stated in the Bid, after award of a Contract, all Bids shall be subject to the requirements of the California Public Records Act pursuant to Government Code section 6250 et seq. The District assumes no responsibility for the confidentiality of information in a bid response.

11. BID PROTEST:

- 11.1. 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:
 - 11.1.1. The bid protest is in writing;
 - 11.1.2. 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
 - 11.1.3. 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.
- 11.2. 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.
 - 11.2.1. Either the District’s Director of Purchasing Services or other individual designated by him/her shall provide the protesting party with a written determination to uphold or deny the protest.
 - 11.2.2. For Bids under the state statutory bid threshold including UPCCAA, the Director of Purchasing will render a final determination of the bid protest.
 - 11.2.3. For Bids over the state statutory bid threshold including UPCCAA, the Purchasing Director will make a recommendation to uphold or deny the protest to the District’s Board of Trustees for a final determination of the bid protest..

SECTION II Applicable to Bids and POs.

1. ACCEPTANCE OF BID:

A digital Purchase Order e-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. CONFLICT OF INTEREST:

No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District.

3. INCENTIVES AND GIFTS:

The District prohibits the use of any gifts, incentives, inducements, favors, monetary returns, and rebates either promised or given ("Incentives") for employee personal benefit. District employees are not to accept Incentives from any Vendor. Providing Incentives shall result in the immediate termination of Vendor's existing and future PO's and contracts.

4. DELIVERY:

- 4.1. 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.
- 4.2. 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.
- 4.3. 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.

5. SHIPPING INSTRUCTIONS TITLE AND RISK OF LOSS:

- 5.1. Unless otherwise specified by the District, all goods are to be shipped free-on-board "FOB Destination", full freight prepaid and allowed, and unloaded to the dock, except for special or expedited orders. 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.
- 5.2. Title to and risk of loss on all goods shall pass to District only upon delivery by Vendor in the manner specified herein and District's acceptance of such goods.

6. TAXES, CHARGES, EXTRAS, AND WITHHOLDING FOR OUT-OF-STATE VENDORS:

The Vendor agrees to provide the District with properly completed Internal Revenue Service (IRS) Form W-9.

- 6.1. Unless otherwise specified on the District's bid forms, the quoted prices must specify applicable sales tax.
- 6.2. 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.
- 6.3. 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

- 6.4. The Vendor shall be responsible for payment of all applicable taxes, including payments of property tax on rented equipment.
- 6.5. The District will not withhold any sums from compensation payable to Vendor, except as provided below for Out-of-State Vendors.
 - 6.5.1. Out-of-State Vendors. If the Vendor has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Vendor acknowledges and agrees that the Vendor is required to provide the District with properly completed California Franchise Tax Board forms related to nonresident withholding of California source income. Also see link: <https://www.ftb.ca.gov/pay/withholding/withholding-on-nonresidents.html>.
 - 6.5.2. Payments of \$1,500 or more, in a calendar year, made to California non-residents, including corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, are subject to seven percent (7%) state income tax withholding pursuant to the California Revenue and Taxation Code, Section 18662. The District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements, unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. OWNERSHIP OF INTELLECTUAL PROPERTY:

Any services performed are work made for hire and District shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed. Vendor shall assign to District any and all rights Vendor could have, may have, or does have, in the work and/or the work product performed, and District shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matters in the name of the District. Vendor shall consent to the use of Vendor's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

13. COMPLIANCE WITH THE LAW, GOVERNING LAW, VENUE:

Vendor shall in the performance of this PO comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

13.1. GOVERNING LAW: District and Vendor agree that the law governing this purchase order shall be that of the State of California.

13.2. VENUE: In the event that suit shall be brought by either party to this purchase order, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

14. WARRANTY:

14.1. 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.

14.2. 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.

15. INSURANCE REQUIREMENTS FOR SERVICES:

If applicable, Vendor agrees to have and maintain the insurance policies specified by the District. All policies, endorsements, certificates and/or binders shall be subject to review and approval by the Risk Manager of the District as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Vendor agrees to provide District with a copy of applicable certificates and/or endorsements before work commences under this purchase order.

16. INDEMNITY:

To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the District, its officers, agents and employees, against any claim, loss or liability (collectively "claims"), including without limitation claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its Officers, Agents, Employees or Subcontractors, in the performance of this PO/contract, or the breach by Vendor of any of its obligations under this PO/contract.

17. INTELLECTUAL PROPERTY INFRINGEMENT:

The Vendor shall hold the District and its officers, agents, representatives, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, "District Parties"), 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.

18. ADVERTISING:

Vendor shall not use the name of the District, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.

19. 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.

20. 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.

21. TERMINATION:

- 21.1. District may, by written notice to Vendor, terminate this purchase order in whole or from time to time in part for default: (i) if Vendor fails to deliver the goods or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed do not conform to the requirements of this purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Vendor becomes insolvent.
- 21.2. If this purchase order is terminated for default, District, in addition to all other rights afforded by law for Vendor's default, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and District may set off any such charge against any amounts which may become payable to Vendor under this purchase order or otherwise.
- 21.3. District may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order for convenience and without cause. In the event of such termination for convenience, Vendor will be paid for those goods delivered and services performed pursuant to this purchase order to the satisfaction of District up to the date of termination.

22. 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.

23. NONDISCRIMINATION:

- 23.1. 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.
- 23.2. Violation of this provision shall be deemed a material breach by Vendor giving District a right to terminate the PO.

24. EQUIPMENT RENTAL TERMINATION:

In the event that funds are not appropriated in any fiscal year for the payment of rental or lease/purchase charges and are not appropriated for the cost of other equipment performing substantially the same function which would replace the equipment leased hereunder, then lessee may terminate the Contract without penalty on or before September 30th of such fiscal year by giving thirty (30) days written notice. Lessee agrees to make every reasonable effort including, but not limited to, requesting budget funds to be appropriated in order to avoid 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.

25. PAYMENT OF PREVAILING WAGES:

Except for projects of \$1000 or less, Vendors who perform building construction, alteration, demolition, or repairs or related building maintenance services 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 <https://www.dir.ca.gov/oprl/dprevwagedetermination.html>. The determination is issued by the California Department of Industrial Relations. Contractors working on projects described in this section must be registered with the DIR to perform work under contract with the District throughout the duration of such contract.

26. 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.

27. 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 District parties, 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.

28. 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.

29. RIGHT TO AUDIT:

District reserves the right to access and audit the Vendor's records related to any purchase or contract for a minimum period of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor shall allow the District access to these records during normal business hours and allow interviews of any employees who might reasonably have information related to such records.

30. 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.

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