

TERMS AND CONDITIONS

VENDOR TO READ

By downloading this document via BidNet I acknowledge that I have, read, understood, and agree to the terms and conditions on all pages of this document and all solicitation documents relating to the associated project. I agree to furnish the commodity or service stipulated on this solicitation document as stated in the specifications.

The solicitation, vendor response, and the Purchase Order (and/or Contract for services) constitute the entire agreement between the vendor and the City of Santa Clarita (City) covering the goods (including services) described herein (the "goods"). Time is of the essence.

1. **SHIPMENT AND INSPECTION.** The terms and routing of shipment shall be as provided on the Purchase Order or as otherwise directed by the City. City may revise shipping instructions as to any goods not then shipped. City shall have the right to inspect any or all of the goods at vendor's place of business or upon receipt by City at City's election, which right shall be exercisable notwithstanding Buyer's having paid for the goods prior to inspection. City, by reason of its failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications therefore, or to have waived any of City's rights or remedies arising by virtue of such defects or non-conformance. Cost of inspection on deliveries or offers for delivery, which do not meet specifications, shall be for the account of the vendor.
2. **RISK OF LOSS.** Notwithstanding any provision hereof to the contrary, title to, and risk of loss of, the goods shall remain with the vendor until the goods are delivered at the D.D.P. point specified in this Contract, or if no such point is specified, then, when the goods are delivered to the City. However, if the goods are of an inflammable, toxic or otherwise dangerous nature, vendor shall hold City harmless from and against any and all claims asserted against City on account of any personal injuries and/or property damages caused by the goods, or by the transportation thereof, prior to the completion of unloading at City's receiving yard.
3. **WARRANTIES.** Vendor warrants to and covenants with the City as follows: vendor shall deliver to City title to the goods free and clear of all security interest, liens, obligations, restrictions or encumbrances of any kind, nature or description, the goods shall be free from defects in material and/or workmanship; unless otherwise specified on the Purchase Order, the goods shall be new and not used or reconditioned; the goods and their packaging shall conform to the description thereof and/or specifications therefore contained in this Contract. In placing this Contract, City is relying on vendor's skill and judgment in selecting and providing the proper goods for City's particular use. The goods shall be in all respects suitable for the particular purpose for which they are purchased and the goods shall be merchantable. Vendor shall indemnify and save and hold City harmless from and against any and all damages, losses, demands, costs and expenses arising from claims by third parties for property damage, personal injury or other losses or damages arising from vendor's breach of its obligations hereunder.
4. **REMEDIES.** In the event of vendor's breach of this Contract, City may take any or all of the following actions, without prejudice to any other rights or remedies available to City by law: (a) require vendor to repair or replace such goods, and upon vendor's failure or refusal to do so, repair or replace the same at vendor's expense: (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at vendor's option; said return to be made at vendor's cost and risk: (c) cancel any outstanding deliveries

or services hereunder and treat such breach by vendor as vendor's repudiation of this Contract. In the event of City's breach hereunder, vendor's exclusive remedy shall be vendor's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

5. **FORCE MAJEURE.** For the purposes of this Contract, an event of "force majeure" shall mean any or all of the following events or occurrences, strikes, work stoppages, or other labor difficulties; fires, floods or other acts of God; transportation delays; acts of government or any subdivision or agency thereof; failure or curtailment of power supply in the Pacific Southwest power grid; or any other cause, whether or not similar to the causes or occurrences enumerated above; in all cases, which are beyond the control of the party claiming the occurrence of a force majeure event and which delays, interrupts or prevents such party from performing its obligations under this Contract. Notwithstanding any provision hereof to the contrary, the reduction, depletion, shortage, curtailment or cessation of vendor's supplies or reserves or any other supplies or materials of vendor shall not be regarded as an event of force majeure. The party affected by a force majeure event shall give notice thereof to the other party within ten days following the occurrence thereof and shall apprise the other party of the probable extent to which the affected party will be unable to perform or will be delayed in performing its obligations hereunder. The affected party shall exercise due diligence to eliminate or remedy the force majeure cause and shall give the other party prompt notice when that has been accomplished. Except as provided herein, if performance of this contract by either party is delayed, interrupted or prevented by reason of any event of force majeure, both parties shall be excused from performing hereunder while and to the extent that the force majeure condition exists, after which the parties' performance shall be resumed. Notwithstanding the foregoing, within five days following vendor's declaration of a force majeure event which prevents its full and/or timely delivery of goods hereunder, City may, at its option and without liability (a) require vendor to apportion among its customers the goods available for delivery during the force majeure period; (b) cancel any or all delayed or reduced deliveries; or (c) cancel any outstanding deliveries hereunder and terminate this Contract. If City accepts reduced deliveries or cancels the same, City may procure substitute goods from other sources in which event this contract shall be deemed modified to eliminate vendor's obligation to sell and City's obligation to purchase such substituted goods. After cessation of a force majeure event declared by vendor, vendor shall, at City's option but not otherwise, be obligated to deliver goods not delivered during the force majeure event. After cessation of a force majeure event declared by City, neither party shall be obligated to deliver or purchase goods not so delivered and purchased during the force majeure period.
6. **PATENTS.** It is anticipated that the goods will be possessed and/or used by City. If by reason of any of these acts a suit is brought or threatened for infringement of any patent, trademark, trade name or copyright with regard to the goods, their manufacture or use, vendor shall at its own expense defend such suit and shall indemnify and save and hold City harmless from and against all claims, damages, losses, demands, costs and expenses (including attorney's fees) in connection with such suit or threatened suit.
7. **COMPLIANCE WITH LAW.** Vendor warrants that it shall comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Contract, including, without limitation, the Fair Labor Standards Act of 1938, as amended, the Equal Employment Opportunity Clause prescribed by Executive Order 11246 dated September 24, 1965 as amended, and any rules, regulations or orders issued or promulgated under such Act and Order. Vendor shall indemnify and save and hold City from and against any and all claims, damages, demands, costs and losses which the City may suffer in the event that vendor fails to

comply with said Act, Order, rules, regulations or orders. Vendor further warrants that all goods sold hereunder shall comply with and conform in every respect to the standards applicable to the use of such goods under the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, and any regulations and orders issued thereunder. Any clause required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein. Where permits and/or licenses are required for the prescribed material/services and /or any construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction there over.

8. **REPORTS, ARTWORK, DESIGNS ETC.:**

- a. If the goods are to be produced by vendor in accordance with designs, drawings or blueprints furnished by City, vendor shall return same to City upon completion or cancellation of this Contract. Such designs and the like shall not be used by vendor in the production of materials for any third party without City's written consent. Such designs and the like involve valuable property rights of City and shall be held confidential by vendor.
- b. If the Contract results in the creation of artwork, designs or written products, including but not limited to, books, reports, logos, pictures, drawings, plans, blueprints, graphs, charts, brochures, analyses, photographs, musical scores, lyrics, shall be considered works for hire and the contractor expressly transfers all ownership and intellectual property rights including copyrights to the City by signing the contract. Such works and the like shall not be used by vendor in the conduct of any business with any third party without the City's written consent.
- c. Unless otherwise agreed herein, vendor at its cost shall supply all materials, equipment, tools and facilities required to perform this Contract. Any materials, equipment, tools, artwork, designs or other properties furnished by City or specifically paid for by City shall be City's property. Any such property shall be used only in filling orders from City and may on demand be removed by City without charge. Vendor shall use such property at its own risk, and shall be responsible for all loss of or damage to the same while in vendor's custody. Vendor shall at its cost store and maintain all such property in good condition and repair. City makes no warranties of any nature with respect to any property it may furnish to vendor hereunder.

9. **GOVERNING LAW.** The Purchase Order and this Contract between the parties evidenced hereby shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.
10. **AMENDMENTS.** Any and all changes to this contract must be made in writing and agreed to by the City. Performance by the contractor shall be considered agreement with the terms of this contract.
11. **ASSIGNMENT.** No assignment by the vendor of contract or any part hereof, or of funds to be received hereunder, is binding upon the City unless the City gave written consent before such assignment.
12. **CURRENCY.** All references to dollar amounts in this solicitation and in vendor's response refer to United States currency. Payments shall be made in United States Currency.

13. **DEFAULT.** In case of default by the vendor of any of the conditions of this solicitation or contract resulting from this solicitation, the vendor agrees that the City may procure the articles or services from other sources and may deduct from the unpaid balance due the vendor, or collect against the bond or surety, or may invoice the vendor for excess costs so paid, and prices paid by the City shall be considered the prevailing market price at the time such purchase is made.
14. **ENVIRONMENTALLY PREFERABLE PURCHASING.** The City of Santa Clarita, being fully aware of the limited nature of our resources and the leadership role government agencies have, supports the Environmentally Preferable Purchasing (EPP) program with Resolution 05-103. With changes in technology and industries occurring rapidly it is frequently difficult to be aware of the latest innovations. Therefore, it is the intent of the City of Santa Clarita to seek out those products which result in less energy usage, least impact on natural resources and greatest reuse of post-industrial and post-consumer material. Vendors are strongly encouraged to offer products and services meeting these criteria and point out those specific aspects or features in their bid. In accordance with Public Contract Code 22152 vendors are required to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold.
15. **GRATUITIES.** The City may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this agreement, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an agreement or securing favorable treatment with respect to the award or amending, or the making of any determinations with respect to the performance of such agreement; provided, that the existence of the facts upon which the City makes findings shall be in issue and may be reviewed in any competent court. In the event of such termination, the City shall be entitled to pursue the same remedies against the Contractor as the City could pursue in the event of default by the Contractor.
16. **INDEMNIFICATION.** The vendor is required to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of any agreement entered into between the parties. Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, the vendor must defend the City (at the City's request and with counsel satisfactory to the City) and indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise.
17. **NON-APPROPRIATION OF FUNDS.** The City's obligation is payable only and solely from funds appropriated for the purpose of this agreement. All funds for payment after June 30 of the current fiscal year are subject to City's legislative appropriation for this purpose. In the event the governing body appropriating funds does not allocate sufficient funds for the next succeeding fiscal year's payments. Then the affected deliveries/services may be (1) terminated without penalty in their entirety, or (2) reduced in accordance with available funding as deemed necessary by the City. The City shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.
18. **ON-SITE INSPECTION.** When deemed necessary by the City, an on-site inspection date and time will be so designated. The vendor is responsible for inspecting and understanding the total scope of the projects (i.e., specifications, quality, and quantity of work to be performed.)

19. **PAYMENT.** (a) Vendor shall state payment terms offered. (b) Payment shall be made on the pay period after receipt and acceptance of goods and/or services and upon using department confirmation of such acceptance.
20. **PREVAILING WAGE.** For all public works, the Vendor is required to quote prevailing wage. For the purposes of this paragraph, public works includes maintenance. All public works projects are subject to the State prevailing wage requirements of the California Labor Code including, but not limited to, Sections 1770, 1771.5, 1773, 1776 and 1777.5. Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates. A copy of the prevailing rate of per diem wages shall be posted at the job site. This bid is subject to SB 854 and SB-96. Contractor shall comply with California prevailing wage laws including, to the extent applicable, Labor Code Section 1720.9. The Contractor is responsible for obtaining a current edition of all California statutes and regulations and adhering to the latest editions of such.
21. **PRICE REDUCTIONS.** If at any time during the life of this contract, the successful vendor reduces his price or prices to others purchasing approximately the same quantities as contemplated by this contract, the contract prices must be reduced accordingly, and the contractor/vendor shall immediately notify the Purchasing Agent, City of Santa Clarita.
22. **PROTECTION OF RESIDENT WORKERS.** The City of Santa Clarita actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Vendor shall establish appropriate procedures and controls so no services or products under the Contract Documents shall be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
23. **SB 854** – No contractor or subcontractor may be listed on a quote for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
24. **TAXES, CHARGES AND EXTRAS.** (a) Vendor must show as a separate item California State Sales and/or Use Tax. (b) The City is exempt from Federal Excise Tax. (c) Charges for transportation, containers, packing, etc. shall not be paid unless specified in bid. Contractor/vendor agrees to cooperate with the City in all matters of local taxation.

25. **CONTRACT PRICING.** Except as otherwise provided, prices must remain consistent through the term of this contract. The City does not pay “surcharges” of any type unless identified in the response to this quote. All costs must be included in the pricing provided to the City.
26. **INSURANCE.** For solicitations involving services the City requires insurance. Proof of insurance shall be provided by using an ACORD certificate of insurance and shall be provided prior to contract signing. Insurance shall be “Primary and Non-Contributory” and must name the “City of Santa Clarita” as an additional insured. The certificate shall list coverage for General Liability (limit of \$1,000,000 CSL or \$1,000,000 per occurrence with a \$2,000,000 aggregate), Auto Liability (limit of \$1,000,000), and Worker’s Compensation (statutory requirement). For professional services, Professional Liability with a limit of \$1,000,000 may also be required. Insurance shall not be cancelable or subject to reduction except upon thirty (30) days prior written notice to the City. Specific insurance requirements shall be set forth in any contract awarded to a vendor.
27. **SAFETY.** Contractor agrees to comply with the provisions of the Occupational Safety and Health Act of 1970 (or latest revision), the State of California Safety Orders, and regulations issued thereunder, and certifies that all items furnished under this bid shall conform and comply with the indemnity and hold harmless clause for all damages assessed against buyer as a result of suppliers failure to comply with the Act and the standards issued thereunder and for the failure of the items furnished under this order to so comply.
28. **GUARANTEES.** CONTRACTOR guarantees each portion of the services as installed against defective materials and workmanship for a period of one (1) year from date of CITY’s written acceptance of the work. Promptly upon CITY’s request within that one (1) year period, CONTRACTOR agrees to correct by repair or replacement without charge to CITY any defects which may appear in the work or any portion thereof. Notwithstanding the foregoing, all guarantees and warranties obtained by CONTRACTOR from manufacturers and vendors of equipment used in the performance of the services shall be extended to CITY’s benefit for the full limit of their terms.
29. **PROTEST PROCEDURES.** Any person or entity may present a formal protest to the City with respect to solicitations being conducted by staff.

a. Definitions

- i. “Bidder” - any person or firm providing a timely, written response to the City solicitation.
- ii. “Bid Protest” - any protest with regard to the response submitted by another bidder.
- iii. “Response” - written response to the City solicitation provided by a person or firm.
- iv. “Solicitation Protest” - a statement of protest, dispute, challenge, disagreement, disapproval or other objection regarding documents, determinations or actions taken or contemplated by the City with respect to a solicitation.
- v. “Solicitation” - document by which the City identifies goods, equipment, services or public construction projects for which it seeks a response.

b. Format

The protest must be in writing and include the following information at a minimum:

- i. The name, address, and phone number of the protester, or the authorized representative of the protester;
- ii. The signature of the protester or authorized representative of the protester;
- iii. The solicitation number and title under which the protest is submitted;
- iv. A detailed description of the legal and/or factual grounds for the protest and all supporting documentation. For protests containing elements not based on publicly released information, the protest must contain documentation clearly showing the date on which the protester received the information; and
- v. The form of relief requested.

c. Solicitation Protests

Protests of any kind regarding the solicitation including, but not limited to, specifications, scope of work, or process, must be received by the City's Purchasing Agent not more than five calendar days after the last day for questions or the last addendum is issued, whichever is later. The decision by the Purchasing Agent on any solicitation protest shall be final.

d. Bid Protest and Review

- i. The protest, in the Format specified above, must be submitted to the City Manager by email or by personal delivery or overnight mail (to City Hall, 23920 Valencia Boulevard, Suite 120, Santa Clarita, CA 91355) so that it is received by the City no later than seven calendar days after the bid opening.
- ii. A copy of the protest must be served upon the bidder subject to the protest in the same manner by which the protest was submitted to the City Manager. Failure to serve the protest upon the bidder subject to the protest is grounds upon which the City may deny the protest.
- iii. A bidder whose bid has been protested by another bidder may submit to the City Manager a written response to the protest by email or by personal delivery or overnight mail (to City Hall, 23920 Valencia Boulevard, Suite 120, Santa Clarita, CA 91355) so that it is received by the City no later than seven calendar days after the protest has been served by the protesting bidder.
- iv. The City Manager or designee shall have up to ten calendar days to decide whether to approve or reject the protest. The written decision of the City Manager or designee on the protest shall be served upon the protesting bidder and any bidder subject to the protest within 14 calendar days of receipt of the bid protest. The City Manager or designee may extend the 10 calendar days if necessary to review additional information requested from any bidder.
- v. The decision of the City Manager or designee on the bid protest shall be final with no further review.

e. State or Federal Funding

- i. If the subject matter of the solicitation or project is receiving any State or Federal funds which require a protest procedure different than the procedures stated above, then that protest procedure shall control.
- ii. In the event there is any lawsuit filed against the City relating to any federally funded project, the City will provide prompt notice of that lawsuit to all agencies who participated in the funding of the project.

f. Mandatory Procedure

- i. This administrative procedure and the time limits set forth herein are mandatory. Failure to comply with these mandatory procedures shall constitute a waiver of any right to pursue the bid protest, including filing a Government Code claim or any legal proceedings or actions.