

LAKE OSWEGO SCHOOL DISTRICT #7J / PURCHASING DEPARTMENT

TERMS AND CONDITIONS

INVITATION TO BID, REQUESTS FOR QUOTATION, PURCHASE ORDER CONTRACT

- 1. Definitions.** "Contract" means the entire written agreement between the parties, including but not limited to any solicitation document and its specification, terms, and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; the purchase order or price agreement document. "Contractor" means a person or (--organization with which the District has contracted for the purchase of goods and is synonymous with "Seller" as used in the Uniform Commercial Code (ORS Chapter 72) ; ("UCC"). ORS means the Oregon Revised Statutes. "District" means Lake Oswego School District No. 7J and is synonymous with "Buyer" as used in ORS Chapter 72.
- 2. Time is of the Essence.** Time is of the essence in the performance of this Contract and the District reserves the right to cancel any undelivered portion of this Contract for failure by Contractor to deliver on time,
- 3. Standard and Special Terms and Conditions.** The terms and conditions printed on this page are standard to District contracts for the purchase of goods and services. There may also be special terms and conditions in a solicitation document which apply only to this Contract.
- 4. Delivery.** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor, unless otherwise specified in the solicitation documents. If specifically authorized to ship goods F.O.B. point of origin, Contractor agrees to prepay all shipping charges, route cheapest method, and to bill the District as a separate item on the invoice for said charges. The District will refuse to accept any C.O.D. shipment. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud, and Contractor's warranty obligations.
- 5. Inspections.** Goods furnished under the Contract shall be subject to inspection and test by the District at times and place determined by District. If the District finds goods furnished to be incomplete or not in compliance with the Contract, the District, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to the District at reduced prices, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and cancel the Contract in whole or in part. Any rejection of goods or materials whether held by the District or returned, will be at Contractor's risk and expense. Nothing in this paragraph shall in any way affect or limit the District's rights as Buyer under the UCC, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
- 6. Purchase Order Number Required.** All invoices, packing lists, packages, shipping notices, and any other written document affecting this Contract shall contain the applicable purchase order number. Packing list(s) shall be enclosed with each and every shipment pursuant to this Contract indicating the contents therein. Each container (box, bag, et.) shall show the purchase order number.
- 7. Warranties.** Unless otherwise stated, all goods shall be free and clear of any liens or encumbrances and shall be new (and, if applicable, the current model) and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants to the District that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.
- 8. Cash Discount.** If the District is entitled to a cash discount, the period of computation shall start on the date the entire order is delivered or the date the invoice is received, which ever is later.
- 9. Force Majeur.** Neither the District nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the parties' reasonable control.

Contractor shall, however, make all reasonable efforts to move or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The District may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of this Contract.

10. Subcontracts and Assignment. Contractor shall not assign, sell, transfer, or subcontract any of its rights or delegate any of its responsibilities under this Contract in whole or in part, without the prior written consent of the District, which may be withheld without cause. No written approval will relieve Contractor of any obligations under this Contract and any transferee or Subcontractor will be considered Contractor's agent. Contractor shall remain liable to the District as if no assignment or transfer had been made.

11. Amendments. No amendment, waiver, or consent to modification or change in terms to this Contract shall be valid unless agreed to in writing by both parties' authorized representatives. Any amendment, waiver, or consent shall only be effective in the specific instance and for the specific purpose given.

12. Successors in Interest. The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.

13. Early Termination. Unless otherwise specified herein, this Contract may be terminated by: (a) mutual written agreement at any time, (b) District for breach, or (c) District at its sole discretion for its convenience on written notice to Contractor stating the extent and effective date of termination.

14. Breach of Contract. Contractor shall be liable for any and all damages suffered by District as the result of Contractor's breach of Contract, including but not limited to incidental and consequential damages, contained in ORS 72.7110 to 72.7170.

15. Payment of Invoices. (a) The District shall make payment 30 days from date the entire order is delivered or date invoice is received, whichever is later or (b) upon termination pursuant to paragraph 13, Contractor shall be paid in accordance with the terms of the Contract for goods delivered and accepted by the District in conformance with the Contract, less any setoff to which the District is entitled.

16. Public Improvement, If this Purchase Order is for any remodeling, construction or other applicable work, Contractor will comply with Oregon Public Contract Code requirements contained in ORS 279A, ORS 279C, 279C.800279C.870(payment of prevailing wages) and the Districts Public Contract Rules.

17. Payment of Laborers (Required by ORS 279B.220). Contractor shall promptly pay as incurred in the performance of this Contract, all persons supplying labor or materials, all sums due the Industrial Accident Fund, and all sums withheld from the Department of Revenue as required by ORS 279B.220. If Contractor fails, neglects, or refuses to make prompt payment of these obligations, the District may pay such claim directly to the person or entity and charge the amount of the payment against funds due or to become due Contractor by reason of such contract. Payment of a claim in this manner shall not relieve Contractor or Contractor's surety, if any, from obligation with respect to any unpaid claims.

18. Independent Contractor Status. This Contract is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the District and Contractor, but is rather an agreement between independent parties, these being the District and Contractor.

19. Condition Concerning Salvaging, Recycling, Composting, or Mulching Waste Material (Required by ORS 279B.225). If this Contract involves lawn or landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible.

20. Printing, Binding, and Stationery Work (Required by ORS 282.210). If this solicitation is for the purpose of obtaining printing, binding, or stationery work, work awarded under this solicitation shall be performed within this state, unless subject to exception under ORS 282.210(2).

21. Payment for Medical Care and Workers Compensation (Required by ORS 279B.230). (a) Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees

under any law, contract, or agreement for the purpose of providing or paying for the services; (b) all subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

22. Hazardous Chemicals. Contractor shall provide the District with a Material Safety Data Sheet for any goods provided under this Contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag, or mark such goods. Contractor shall notify District prior to use of such chemicals.

23. Access to Records. Contractor agrees that the District and its authorized representatives shall have access to all books, documents, papers, and records of Contractor directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles.

24. Award to Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to this Contract. The District shall withhold final payment under this Contract until Contractor has met this requirement.

25. Compliance with Applicable Law. Contractor shall comply with all federal, state, and local laws, regulations, and administrative rules applicable to public contracts and to the work done under this Contract.

26. Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold the District, its officers, agents, and employees, harmless against all liability, loss, costs, or expenses, including attorneys' fees, and against all claims, actions, or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any actor omission of an act sustained in any way in connection with the performance of this Contract or by conditions created thereby, or based upon violation of any statute, ordinance, or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the District, but is in addition to such common law or statutory provisions.

27. Waiver. Waiver of any default under this Contract by the District shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

28. Governing Law. The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and rules of the District, as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Contract must be brought in Clackamas County Circuit Court, or, if the claim must be brought in a federal forum, in the United States District Court for the State of Oregon.

29. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

30. Anti-discrimination Clause. Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and District policies.

31. Rule of Construction. The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the Contract.