

City of Fort Wayne
Standard Terms & Conditions
Instructions to Bidders

ARTICLE A

A.1 DEFINITION

A.1.1 City of Fort Wayne, a city in Allen County, a political subdivision of the State of Indiana.

A.2 BIDDER AND CONTRACTOR

A.2.1 A bidder is a person or entity that submits a bid.

A.2.2 The contractor is the person or entity that enters into a contract with the City of Fort Wayne to furnish goods or services.

A.3 ESTIMATED QUANTITIES

A.3.1 If the quantity set forth in the invitation to Bid and Proposal is approximate and represents the estimated requirements of the City for a specified period of time, the unit price and the extended total price thereof will be used only as a basis for the evaluation of bids. The actual quantity of materials necessary may be more or less than the estimate, but the City will neither be obligated nor limited to any specific amount.

A.4 ADDENDA

A.4.1 Addenda is a written instrument issued by the City of Fort Wayne prior to the date for receipt of bids, which modify or interpret the bidding documents by addition, deletions, clarifications or corrections.

A.4.2 Addenda will be mailed or delivered to all who are known by the Purchasing Department to have received a complete set of bidding documents.

A.4.3 Copies of addenda will be made available for inspection in the Purchasing Department.

A.4.4 Each bidder will ascertain prior to submitting his bid that he has received all addenda issued, and he will acknowledge their receipt on the proposal page of this bid.

ARTICLE B

B.1 BIDDING DOCUMENTS

B.1.1 Bidders will promptly notify the Purchasing Director of any ambiguity, inconsistency or error, which they may discover upon examination of the bidding documents.

B.1.2 Interpretations, corrections and changes to the bidding documents will be made by addendum. Interpretations and changes made in any other manner will not be binding and bidders will not rely upon such interpretations, corrections and changes.

B.1.3 In so far as Worker's Compensation is concerned, the bidder or contractor agrees to furnish an official certificate or receipt of the Industrial Commission of Indiana, showing that he has paid into the State Insurance Fund the necessary premium, whenever such certificates are required in the Invitation to Bid. (IC 22.3.14)

B.1.4 All common wage requirements (IC 5-16-7-1) will apply when applicable in the bid. Should common wages be required, the City will attach that schedule to the bid package.

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B.2 SUBSTITUTIONS

- B.2.1 The materials, products and equipment described in the bidding documents establish a standard or type, function, and quality to be met by any proposed substitution.
- B.2.2 Unless the particular specification prohibits substitutions, bidders are encouraged to propose materials, products or equipment of comparable type, function and quality.
- B.2.3 Bids for substitute items will be stated in the appropriate blank or if the bid form does not contain blanks for substitutions, bidders will attach to the bid, on company letterhead, a statement of the manufacturer and brand name of each proposed substitution plus a complete description of the item including descriptive literature, illustrations, performance and test data and any information necessary for an evaluation. The burden of proof of the merit of the proposed substitution is upon the bidder. Failures to comply could be grounds for rejection.

B.3 DEMONSTRATION/SAMPLES

- B.3.1 If required by the City, the bidder will demonstrate the exact model(s) proposed within seven (7) calendar days from receipt of request from the City.
- B.3.2 Demonstration should be in the City designated by Purchasing Director.
- B.3.3 If bidder does not have a model in the Fort Wayne area, it will be at the bidders expense to send appropriate City personnel to the nearest location to view proposed item(s).
- B.3.4 If items being bid are small and mail able and bidder is bidding other than specified, the bidder must supply a sample of the item proposed.
- B.3.5 Sample must be supplied on or before the bid opening date.
- B.3.6 Samples supplied as requested will be returned at bidders expense after receipt of goods.

B.4 DATA PRIVACY

- B.4.1 Contractor agrees to abide by all applicable local, state and federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, patents, and patent rights. The contractor agrees to hold the City of Fort Wayne harmless from any claims resulting from the contractor's unlawful disclosure or use of private or confidential information.
- B.4.2 All laws of the United States of America, the State of Indiana and the City of Fort Wayne are applicable to the products or services covered herein, are made a part thereof.

ARTICLE C

C.1 BIDDING PROCEDURE

- C.1.1 Bids must be sealed and submitted on forms and proposal sheets included with the bidding documents.
- C.1.2 Form 95 and/or Form 96 must be completed in full. The Non-Collusion Affidavit must be signed and notarized as required by law.
- C.1.3 Appropriate blanks on the forms will be filled in by manually printing in ink or by typing the requested information.

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- C.1.4 Any interlineations, alteration or erasure will be initialed by the signer of the bid.
- C.1.5 Bidders will not change the bid form nor make additional stipulations on the bid form. If a bidder wishes to amplify or qualify his bid, a statement that additional information is attached will be made at the appropriate place on the bid form and the amplifying or qualifying information on the bidder's letterhead will be attached to the bid form. The City of Fort Wayne may accept or reject amplified or qualified bids.
- C.1.6 In case of discrepancy between the unit price and the extended figures, the unit price will govern. Unless otherwise provided elsewhere in the specifications, the prices of the bidder will remain firm throughout the contract period and in any contract extension period.
- C.1.7 Each copy of the bid will be signed by the person or persons legally authorized to bind the bidder to a contract. A bid submitted by an agent should have a current power of attorney attached certifying the agent's authority to bind the bidder.

C.2 BID SECURITY

- C.2.1 If so stipulated in the invitation to bid, each bid will be accompanied by a certified check or bid bond executed by a surety authorized to do business in the State of Indiana. This will be drawn in the amount specified and made payable to the City of Fort Wayne; pledging that the bidder will enter into a contract with the city on terms stated in his bid governing the faithful performance of the contract and the payment of all obligations arising. Should the bidder refuse to enter into such contracts or fail to furnish such bonds if required, the amount of the bid security will be forfeited to the City of Fort Wayne as liquidated damages, not as a penalty.
- C.2.2 The City of Fort Wayne will have the right to retain the bid security of bidders to whom an award is being considered until either (a) the contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that the bids may be withdrawn, or (c) all bids have been rejected.

C.3 SUBMISSION OF BIDS

- C.3.1 The bidder will assume full responsibility for timely delivery at the location designated for receipt of sealed bids. Late bids will *not* be considered.
- C.3.2 Oral, telephone or fax bids are invalid and will not receive consideration.

C.4 BIDDER'S REPRESENTATION

- C.4.1 Each bidder, by making his bid, represents that the bidder has read and understood the bidding documents and his bid has been made in accordance therein.
- C.4.2 Each bidder for services further represents that the bidder has familiarized himself with the local conditions under which the work is to be done and has correlated his observations with the requirements of the bidding documents.
- C.4.3 Each bidder agrees that he will not discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, physical disability, sex or political affiliation, and that we will take affirmative action to insure that applicants are employed and the employees are treated, during employment, without regard to race, color, religious creed, physical disability, ancestry, sex or political affiliation.
- C.4.4 In the performance of work under this contract or any subcontract hereunder, the contractor, subcontractor, and any

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person acting on behalf of such contractor or subcontractor, will not discriminate against any person who is qualified and available to perform the work to which the employment relates. The contractor, subcontractor, or any person acting on behalf of such contractor or subcontractor will not obstruct the enforcement of this contract provision.

The contractor, subcontractor, or any person acting on behalf of such contractor or subcontractor will not retaliate against any person because of good faith, reasonable actions taken to overcome, alleviate, or report discrimination.

Enforcement of this section will be through order of the City of Fort Wayne in the following manner:

- a) Whenever any member of the Department of the City of Fort Wayne awarding this contract or whenever a Compliance Officer of the City of Fort Wayne has reason to believe that any of the provisions of this clause and of Ordinance Sec. 15-17 have been violated, the matter may be referred to the Metropolitan Human Relations Commission for investigation and initiation of discrimination charges against the contractor or sub-contractor. Cases over which the Commission has no jurisdiction will be investigated by the Compliance Officer.
- b) A final order of the Metropolitan Human Relations Commission will be forwarded to the to the department awarding the contract, which may invoke one of the remedies set forth in subsection (c) hereof, if it is a matter over which the Metropolitan Human Relations Commission has no jurisdiction, the Board of Public Works and Safety will conduct a hearing to determine whether there has been a breach of this article of this chapter. In so doing, the Board may call upon the Commission for consultation.
- c) Upon finding that a contractor or subcontractor has violated a provision or provisions of this section, whether discriminating, obstructing, retaliating, or otherwise, the City may:
 - 1. Deduct from the amount payable to the contractor by the City of Fort Wayne under such contracts a penalty of not less then Ten Dollars (\$10.00) per day per violation, nor more than One Thousand dollars (\$1,000.00) per day per violation. Each day on which a continuing violation exists will be deemed a separate offense; or,
 - 2. The City may cancel or terminate the contract, and all money due or to become due there under may be forfeited, for second or any subsequent violation of this section.

C.4.5 Each bidder will be responsible for complying with any applicable affirmative action laws.

C.5 MODIFICATION OR WITHDRAWAL OF BID

- C.5.1 A bid may not be modified, withdrawn or canceled by the bidder following the time and date designated for receipt of bids, and each bidder so agrees in submitting his bid.
- C.5.2 Prior to the time and date designated for receipt of bids, any bid submitted may be modified or withdrawn by notice to the Purchasing Director at the place designated for receipt of bids.
- C.5.3 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids provided that they are then fully in conformance with these instructions to bidders.

C.6 DELIVERY OF GOODS

- C.6.1 All delivery of goods is to be FOB Fort Wayne, Indiana unless otherwise stated in the bid.

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- C.6.2 The City reserves the right to inspect and have any goods tested after delivery for compliance with the specifications. Notice of latent defects, which would make the items unfit for the purposes for which they are required, may be given at any time within one year after discovery of the defects.
- C.6.3 All items rejected must be removed immediately by the contractor at the expense and risk of the contractor. If the contractor fails or refuses to remove the rejected items, they may be sold by the City and the proceeds used to cover all related expense incurred by the City.
- C.6.4 In some cases, at the discretion of the City, inspection of the commodities or equipment will be made at the factory, plant, or other establishments where they are produced before shipment.
- C.6.5 The above provisions will not be construed in limitation of any rights the City may have under any laws including the Uniform Commercial Code.

C.7 CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

- C.7.1 The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any Contractors doing business with the City. A copy of this policy is available for inspection in the office of Risk Management, 1 Main Street, Room 330. The successful bidder will be furnished a copy of said policy, and, as a condition of being awarded any contract, the successful bidder shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne.

ARTICLE D

D.1 CONSIDERATION OF BIDS

- D.1.1 The properly identified bids, which have been received on time, will be opened publicly and will be read aloud. The bids are available for inspection after all bids have been read aloud.

D.2 REJECTION/ACCEPTANCE OF BIDS

- D.2.1 The City of Fort Wayne will have the right to accept or reject any and all bids and to accept or reject a bid not accompanied by any required bid surety or by other data required by the bidding documents, or to accept or reject a bid which is in any way incomplete or irregular.

- D.2.2 The City of Fort Wayne will reject all bids from bidders where there has been collusion between the bidders.

D.3 BID AWARD

- D.3.1 It is the intent of the City of Fort Wayne to award a contract to the lowest responsible and responsive bidder meeting specifications, provided the bid has been submitted in accordance with the requirements of the bidding documents. The City will have the right to waive any informality or irregularity in any bid(s) received; to accept or reject the bid(s) which in its judgment is in its own best interest, to solicit new bids, or to purchase or lease in the open market without further advertising for bids.

- D.3.2 Award will be based on the following (where applicable):

1. Adherence to all conditions and requirements of the bid specifications.
2. Total bid price (including any discounts), unit bid price or extended price.

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3. General reputation and experience of bidders.
4. Hourly rates for specified personnel.
5. Evaluation of the bidder's ability to service the City.
6. Financial responsibility of the bidder.
7. Prior knowledge of an experience with the bidder in terms of past performance.
8. Needs and requirements of the City.
9. Experience with the products involved.
10. Nature and extent of company data furnished upon request of the City.
11. Quantity of merchandise.
12. Product appearance, workmanship, finish, taste, feel and results of any product testing.
13. Overall completeness of product line offered.
14. A locality in relation to the City, where prompt service is required.
15. Bidder's ability to meet delivery and stocking requirements.
16. Delivery date.
17. Maintenance cost and warranty provisions.
18. Repurchase, trade-in or residual value.

D.3.3 Unless otherwise indicated in the invitation to bid, the City reserves the right to award the contract in whole or in part, by item, by group of items or by section where such action serves the best interest of the City.

D.3.4 Bids submitted on an all or none basis or similar basis will be evaluated against the total of the low bids for the individual items.

D.4 WARRANTIES, GUARANTEES AND MAINTENANCE

D.4.1 A copy of the manufacturers warranties and/or guarantees for the items bid must accompany your bid.

D.4.2 As a minimum requirement of the City, the vendor will also guarantee, in writing, that any defective components discovered within a one year period following the date of the equipment acceptance will be replaced by the vendor at no cost to the City.

D.4.3 Replacement parts of defective components will be shipped to the City of Fort Wayne at no cost to the City. If defective parts are required to be returned to the vendor, the shipping costs will be born by the vendor.

D.5 OPTIONAL RENEWAL

D.5.1 By mutual agreement between the City of Fort Wayne and the supplier, the contract period may be extended. However, the agreement to extend must be completed in written form at the original price and under the original conditions governing the contract.

ARTICLE E

GENERAL CONDITIONS OF THE CONTRACT

E.1 CONTRACT DOCUMENTS

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- E.1.1 Nothing in the contract documents will create any contractual relationship between the City and the contractor's employees, subcontractors and their agents and employees and any other parties furnishing goods and services to the contractor and their agents and employees.
- E.1.2 The contract documents consist of the invitation to bid, instructions to bidders, contractor's bid form with attachments if any, executed contract, conditions of the contract (general, supplementary and other conditions), the specifications, all addenda issued prior to receipt of the bids and all modifications issued after execution of the contract. A modification is (1) a written amendment or supplement to the contract signed by both parties or (2) purchase release issued by the City or (3) change order.
- E.1.3 The contract documents form the document. This contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral.
- E.1.4 The issue of a purchase order that is in accordance with the specification represents a contract. Should vendor find purchase order to be incorrect, said vendor must notify Purchasing Director within twenty-four (24) hours of purchase order date.
- E.1.5 All disputes which arises under this contract which cannot be resolved between the contractor and the City will be referred in writing to the City Purchasing Agent who will make a decision in writing. The City Purchasing Agent's decision will be final unless the contractor files an action in a court of competent jurisdiction within thirty (30) days.
- E.1.6 Where required, the contractor will, in accordance with the procedures, rules, and regulations, promulgated by the United States Office of Management and Budget, maintain records and accounts, including personnel, property and financial records adequate to identify and account for all costs pertaining to the agreement, and such other records as may be required by all applicable statutes, rules or regulations to assure proper accounting for all project funds, both federal and non-federal. These records will be made available for audit purposes to the City of Fort Wayne, including the Compliance Office, or any authorized federal or state government agency, and will be retained for three (3) years after the expiration of this agreement.
- E.1.7 In accordance with I.C. §22-5-1.7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.
- E.1.8 The Contractor Work Hours and Safety Standard Act is applicable to federally funded contracts in excess of \$2,500 involving the employment of mechanics and laborers. (As used in this paragraph the terms "laborers" and "mechanics" include watchmen and guards).
- a) No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, will require that any such laborer or mechanic in any work week in which he or she is employed to work in excess of eight (8) hours in a calendar day or in excess of forty (40) hours in such work week. Workers will receive compensation at a rate not less than 1-1/2 times their basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours per work week, whichever is greater.
- b) In the event of any violation of the clause set forth in the subparagraph (a) of this paragraph, the contractor and any subcontractor responsible therefore will be liable for the unpaid wages. In addition, such contractor and subcontractor will be liable to the United States for liquidated damages. Such liquidated

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damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (a) of this paragraph, in the sum of \$10.00 for each calendar day in which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (a) of this paragraph.

- c) The City will, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor or any other federally assisted contract subject to the contract work hours and safety standards act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liability that such contractor or sub-contractor has for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) of this paragraph.
- d) The contractor or subcontractor will insert in any subcontract, clauses set forth in paragraph (a) through (d) of this paragraph, and also this clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor will be responsible for compliance by any subcontractor or lower tier subcontractor for the clauses set forth in subparagraphs (a) through (d) of this paragraph.

E.1.8 The Clean Air Act, Clean Water Act, and EPA Regulations are applicable to all federally funded contracts in excess of \$100,000.00.

- a) Any facility to be used in this contract by the contractor or any of his subcontractors will not be listed on the EPA list of violating facilities as required by CFR Section 15.20.
- b) The contractor will comply with all requirements of Section 114 of the Clean Air Act and Section 308 of the Clean Water Act, including those relating to inspection, monitoring, entry reports, and information.
- c) The contractor will notify the City Purchasing Agent of any communication from the Assistant Administrator for enforcement of the Environmental Protection Agency.
- d) The contractor will include the criterion requirements set forth in subparagraph (a) through (d) of this clause in every non-exempt subcontract and will take such action as the City or Federal government may direct as a means of enforcing such provisions.

E.1.9 All federally funded contracts require recipients and subrecipients:

- a) Take reasonable cybersecurity and other measures to safeguard information including protecting personally identifiable information and other types of information.
- b) To the greatest extent possible, should purchase, acquire or use products and services that can be reused, refurbished or recycled.

E.1.10 If the bidder is a trust, it must comply with the provisions of IC 36-1-0-8.5.

ARTICLE F

INDEMNIFICATION, INSURANCE, AND PROTECTION OF LIVES AND PROPERTY

F.1 INDEMNIFICATION

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- F.1.1 The contractor will indemnify and hold harmless the City of Fort Wayne and its officers and employees from and against all claims, damages, losses, expenses, including but not limited to attorneys fees, arising out of or resulting from the performance of the contract, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than goods, materials and equipment furnished under this contract) including the loss of use resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the contractor, and subcontractor, or anyone directly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- F.1.2 In any and all claims against the City or any of its officers or employees by an employee of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph G.1 will not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under workers or workmen's compensation acts, disability benefit acts or other employee acts.

F.2 WORKERS COMPENSATION INSURANCE

- F.2.1 For contracts involving performance of work pursuant to the provisions of Indiana Code I.C. 22-3-2-14 (a) bidders are required to furnish a certificate from the Indiana Workers Board showing that such bidder has complied with I.C. 22-3-5-1 and I.C. 22-3-5-2.

ARTICLE G

GENERAL CONDITIONS OF THE CONTRACT

G.1 PAYMENTS

- G.1.1 The City is not subject to federal excise taxes. Federal Tax Registry Number is 356-001-255-0013.
- G.1.2 The City is not subject to the Indiana sales and use taxes on the purchase of goods and other materials.

G.2 METHOD OF INVOICING FOR PAYMENT

- G.2.1 No contract will be official for services or materials unless a purchase order has been issued.
- G.2.2 Contractor will bill the city:
- a) on regular invoice form giving a complete and detailed description of the goods delivered, including purchase order number;
 - b) if the contractor allows a cash discount, the period of time in which the City must make payment to qualify for the discounts will be computed from the date the City received the invoice (completely filled out), or the date the goods are delivered and accepted, whichever may be later, and will be for not less than thirty (30) days; and
 - c) if more than one shipment is made under the contract, the City will make partial payments on a basis that is agreeable to both parties.
- G.2.3 Payments under this contract will be made in the manner provided by law for payments of claims against the City.
- G.2.4 No payment will be made for production overruns in excess of the quantity ordered by the City (unless with prior written approval).
- G.2.5 No payment will constitute an acceptance of any goods or services not in accordance with the requirements of the contract.

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G.2.6 Schedule of values may be used in contractual work. The city will so designate if applicable. (See Invitation to Bid Page 1).