

WASHINGTON ELEMENTARY SCHOOL DISTRICT #6 – PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS

SHIP-TO ADDRESS: MUST NOT BE CHANGED WITHOUT PRIOR APPROVAL OF THE PURCHASING DEPARTMENT. PLEASE CALL THE PURCHASING DEPARTMENT AT (602) 347-2864

BLANKET/OPEN PURCHASE ORDERS: DO NOT EXCEED THE TOTAL DOLLAR AMOUNT LISTED ON PURCHASE ORDER, UNLESS PRICE INCREASE HAS BEEN AUTHORIZED BY THE PURCHASING DEPARTMENT AT (602) 347-2864. OTHERWISE BALANCE BECOMES THE RESPONSIBILITY OF THE VENDOR.

GENERAL

1. DEFINITIONS: The term Purchaser means WESD #6. The Seller means the persons, firm or corporation from whom the merchandise/service has been ordered. The term Buyer means a person who prepares quotes, bids, or request for proposal solicitations and monitors compliance of successful offeror.
2. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser.
3. Seller may not assign this order without Purchaser's prior written consent.
4. Time is of the essence of this order.

COMPLIANCE

1. No charge(s) will be made on this order without the approval of the Purchaser.
2. Unless otherwise specified above, items not received by June 30th will be considered cancelled.
3. Any and all disputes or claims relative to the Purchase Order are subject to resolution through the mechanisms of the Arizona Education Procurement Code. Any signatories agree that if a claim is made against the District and the District prevails under the Procurement Code, the contract party shall be responsible for the District's attorney's fees and cost.
4. This agreement is subject to cancellation pursuant to ARS 38-511.
5. A "MATERIAL SAFETY DATA SHEET" must be enclosed with all products containing hazardous substance and the box containing such must be clearly marked.
6. The District maintains an Asbestos Management Plan at each school. The Management Plan is kept in the school's main office and is available upon request for review during normal school hours. The master copies of all District Management Plans are maintained by District. Any company who may do work for the District and whose short-term workers may come in contact with asbestos containing building materials (ACBM) or suspected Asbestos Containing Building Materials assumed to be Asbestos Containing Materials (ACM) in a school or building can review the Asbestos Management Plans and can contact the Manager of Compliance & Training concerning ACBM or assumed ACM in a district's school or building.
7. No waiver of a breach of any provision or any part of any provision of this order shall constitute a waiver of any other breach of such provision or any other provision.
8. Purchaser may at any time insist upon strict compliance with these terms and conditions, notwithstanding any course of dealing or usage of trade to the contrary
9. Specifically written terms, conditions and instructions relating to advertised quotes, bids or request for proposals by Contract Manager and written offers from Seller take precedence over these terms, conditions and instructions where conflict exists and this Purchase Order form is a part of the contract documents.

CONSULTANT AND PROFESSIONAL CONTRACT SERVICES

1. THOSE VENDORS WHO ARE HIRED BY DISTRICT TO PERFORM SERVICES SHALL AGREE TO THE FOLLOWING: I certify that I am an Independent contractor as defined in ARS 23-902 and that I do not require Worker's Compensation coverage. I hold the Washington School District #6 harmless and waive any rights or claims against the District.

TAXES, INVOICES, PACKING SLIPS

1. Purchaser is required to report and pay any AZ Use Tax incurred or to be incurred on this purchase directly to the AZ Dept. of Revenue. Please identify & add such tax only if you pay directly to the state.
2. Invoices must clearly reference only one Purchase Order and be submitted in duplicate.
3. Invoices must be itemized, showing quantity, unit price, line item number, labor, material and state and/or local taxes.
4. Seller shall enclose one packing slip and mark the package in which the packing slip is enclosed. Back orders and split orders must be noted.

SHIPPING AND DELIVERY

1. All items shown on this Purchase Order shall be shipped F.O.B. destination unless otherwise noted on the Purchase Order.
2. If Seller cannot ship order without delay, Seller shall immediately notify the Purchaser of that fact and of the probable date of delivery.
3. Goods must be shipped as per instruction, otherwise any extra handling charges will be deducted from invoice.
4. In the event of Seller's failure to deliver as and when specified, Purchaser reserves the right to cancel this order or any part thereof without prejudice to its other rights. The Seller agrees the Purchaser may return part or all of any shipment received, and may charge Seller with any loss or expense sustained as a result of such failure to deliver.

PRICE

1. Price deviations and substitutions in kind are permitted ONLY with authorization of the Purchaser.
2. No boxing, packing or cartage charges will be paid by Purchaser unless specifically authorized in writing by the Purchaser.
3. It shall be understood that the cash discount price period begins on the date of the invoice or the date of the receipt of goods whichever is the later date.

INSPECTIONS

1. All goods are subject to Purchaser's inspection within a reasonable time after arrival at the designation of use. If upon inspection any goods are found to be unsatisfactory, defective or of inferior quality of workmanship or fail to meet the specifications or any other requirements to this order, Purchaser may return such goods to Seller at Seller's expense. Payment for goods prior to inspection shall not be construed to be acceptance of unsatisfactory, defective nonconforming goods. Seller shall reimburse Purchaser for any amount paid by Purchaser for such

nonconforming goods and for any cost incurred by Purchaser In connection with the delivery of such goods.

WARRANTIES

1. Seller warrants that the goods will conform to the description and any applicable specifications, shall be of good merchantable quality and fit for the known purpose for which they are sold. The warranty is in addition to any express warranty or service guarantee given by Seiler to Purchaser.
2. Seller warrants that the goods are free and clear of all liens and encumbrances and that the Seller has a good marketable title to same at the time title passes to Purchaser.
3. Seller shall comply with all state, federal and local laws, regulations or orders, applicable to the purchase, manufacturing, processing, construction, installation, servicing, and delivery of the goods. In the event of failure to comply with regulations, or orders, the Seiler shall reimburse the Purchaser for any loss incurred by Seller's failure to comply.
4. In the event of any goods sold or delivered hereunder shall be covered by any patent, copyright or application therefore or other rightful claim of any third person, seller indemnify and hold harmless Purchaser from any and all loss, cost, or expense on account of any and ail claims, suits or judgments on the account of the use of such goods in violation of rights under such patents, copyright, application or other right-claim of any third person.

LIABILITY OF SELLER

1. In the event any goods sold or delivered hereunder shall be defective in any respect whatsoever, Seller shall indemnify and hold harmless the Purchaser from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that may happen or occur in connection with the use of such good and/or are contributed to by defective condition.
2. Seller will hold Purchaser harmless from any or all damages or liability arising out of death or injuries to persons or damage to property proximity caused by the negligence of Seller or his agents, servants or employees.
3. Seller shall be responsible for any and all loss or damage to the goods until delivered to Purchaser at F.O.B. designation point that is specified on the face of the Purchase Order.
4. The District shall endeavor to pay all invoices no later than 30 days from date of product/service receipt.

INSURANCE

1. For service contracts, Seller agrees to maintain such insurance as will fully protect Seller and the District from any and all claims under any workers' compensation statute or unemployment compensation laws, and from any and all other claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from work or other activities carried on, under, or facilitated by this Agreement, either by Seller, its employees, or by anyone directly or indirectly engaged or employed by Seller. Seller shall maintain professional and comprehensive general liability coverage of not less than \$1,000,000.00 each occurrence/offense/wrongful act with a \$2,000,000.00 annual aggregate. Seller agrees to maintain such automobile liability insurance as will fully protect Seller and the District for bodily injury and property damage claims arising out of the ownership, maintenance or use of owned, hired or non-owned vehicles used by Seller or its employees, while providing services to the District.
2. For technology contracts, Seller agrees to maintain such technology or cyber liability insurance as will fully protect Seller and District from any and all claims that may arise from use of products, including cloud computing and mobile devices, protection of private or confidential information, network security and privacy, liability for system attacks, digital asset loss, denial or loss of service, unauthorized access and use, as well as introduction, implantation or spread of malicious software code.

CONTRACTOR'S EMPLOYMENT ELIGIBILITY

1. By accepting this purchase order, vendor agrees to comply and maintain compliance with FINA, ARS 41-4401 and 23-214 which requires compliance with federal immigration laws by State employers. State contractors and State subcontractors in accordance with E-Verify Employee Eligibility Verification Program.

FINGERPRINT & BACKGROUND CHECKS

1. By accepting this purchase order, vendor agrees to comply with fingerprinting requirements in accordance with ARS 15-512 unless otherwise exempted.

REGISTERED SEX OFFENDER PROHIBITION

1. Registered Sex Offender Restriction. Pursuant to this order, the named vendor agrees by acceptance of this order that no employee of the vendor or a subcontractor of the vendor, who has been adjudicated to a registered sex offender, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. The vendor further agrees by acceptance of this order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion.

FEDERALLY FUNDED PURCHASES

1. Affordable Care Act. The bidder understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The bidder shall bear sole responsibility for providing health care benefits for its employees who provide services to the District as required by State or Federal law.
2. Buy American Provision (only applies to Food & Nutrition food purchases). The bidder will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7CFR§210.21(d) and 7CFR§220.16(d). The bidder shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.
3. Disclosure of Lobbying Activities. Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the bidder must disclose lobbying activities in connection with school nutrition program. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7CFR§3018.100 (Only applies to contracts over \$100,000)

4. Certification Regarding Lobbying. Pursuant to 31 USC 1352, the bidder must submit a certification regarding lobbying which conforms in substance with the language provided in 2CFR Part 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions.
5. Certificate of Independent Price Determination. The bidder admits that all prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor certification regarding non-collusion.
6. Civil Rights Compliance (only applies to Food & Nutrition contracts). In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
 - a. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
 - b. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found on line at www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.
7. Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation. The bidder will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA List of Violating Facilities.
8. Contract Work Hours and Safety Standard Act. The bidder shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Only applies to contracts over \$100,000)
9. Debarment, Suspension, Ineligibility and Voluntary Exclusion. By signing the Bid & Acceptance form, the bidder certifies that they have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under executive order 12549 and 12689. The bidder shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and Suspension codified at 2 CFR Part 180 and 2 CFR Part 417. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (Only applies to contracts over \$25,000)
10. Energy Policy and Conservation Act. The bidder shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94–163, 89 Stat.871.)
11. Equal Employment Opportunity. The bidder shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60).
12. Record Keeping. The books and records of the bidder pertaining to operations under this Agreement shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the US Department of Agriculture (for food/nutrition only), and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S § 35-214). 7CFR§210.23 and 2 CFR Part 200.318(i).
13. Invoicing (only applies to Food & Nutrition contracts). The bidder fully discloses all discounts, rebates, allowances and incentives received by the bidder from its suppliers. If the bidder receives a discount, rebate, allowance, or incentive from any supplier, the bidder must disclose and return to the District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the District. The bidder must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. 7CFR§210.21(f)(1)(iv).
 No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR§210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in the bidder receiving payments in excess of the bidder’s actual, net allowable costs. 7CFR§210.21 (f)(2)
 The return of purchase incentives, discounts, rebates, and credits will be to the Sponsor’s non-profit Child Nutrition account.
14. Termination Clause. The District may terminate for cause and for convenience the contract. Appendix II to 2 CFR Part 200. (Only applies to contracts over \$10,000)
15. E-Verify Requirement. The bidder warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. (That subsection reads: After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
16. Description of process for enabling vendors to receive or pick up orders upon contract award. Once the District has made the decision to order from a vendor of an awarded contract, price will be confirmed/verified and purchase orders issued and sent to the vendor, based upon the needs of the District. No volume is implied or guaranteed.
17. Solid Waste Disposal Act. The bidder shall comply with Section 6002 of the Solid Waste Act and its implementing regulations.

18. Minority & Woman Businesses. When federal funding may be used, the District shall take affirmative steps to ensure minority businesses, women's business enterprises, and labor surplus area firms are notified of solicitation opportunities when possible. Prime contractors are required to take the same affirmative steps let 2 CFR Part 200.321
19. Program Regulation (only applies to Food & Nutrition contracts). Bidder shall be in conformance with applicable portions of the School Food Authority's (SFA) agreement under the program. Bidder will conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, and 250. Bidder shall provide products that meet Public Law 111-296, the Healthy Hunger-Free Kids Act of 2010 (HHFKA). bidder's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements.
20. Copeland Anti-Kickback Act and Davis-Bacon Act (for building projects in excess of \$2000).
 - a. Copeland "Anti-Kickback" Act - All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act.
 - b. Davis-Bacon Act - The bidder shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
21. Contract Violations or Breach of Contract. The District reserves all administrative, contractual and legal rights and privileges under applicable laws and regulations with respect to this procurement in the event of contractor violation or breach of contract.
22. Rights to Inventions. For all contracts that meet the definition of "funding agreement" and where the District wishes to enter into a contract with a small business firm or non-profit organization, the bidder shall comply with the Rights to Inventions made by non-profit organizations and small business firms under Government Grants, Contracts, and Cooperative Agreements.
23. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment. Offer agrees that they will not provide equipment, services or systems that do not comply with 2 CFR §200.216 and/or 2 CFR §200.471.