

North County Transit District General Provisions for Purchase Orders (Rev. 1, 2/29/00)

1. **INSPECTION AND ACCEPTANCE** - All items are subject to final inspection and acceptance by DISTRICT at destination notwithstanding any payment or prior inspection at SELLER'S facilities. Final inspection will be made within a reasonable time after receipt of items hereunder.
2. **CHANGES** - By written notice or order, DISTRICT may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services furnished. If any such change causes an increase or decrease in the price of this agreement or in the item required for its performance, SELLER or DISTRICT shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse SELLER from proceeding immediately with the agreement as changed.
3. **SALES AND USE TAX** - Unless otherwise specified, SELLER acknowledges that prices stated in the order portion of this agreement do not include sales or use tax.
4. **DEFAULT AND EXCESS REPROCUREMENT LIABILITY** - DISTRICT may terminate this agreement if a federal or state proceeding for the relief of debtors is undertaken by or against SELLER, or if SELLER makes an assignment for the benefit of creditors, or if SELLER fails, after reasonable notice by DISTRICT to cure a deficiency in performance or lack of progress thereto, and DISTRICT shall have such additional remedies as may be available whether or not it so terminates this agreement, including, but not limited to, the payment by SELLER to DISTRICT of expenses incurred by DISTRICT in reprocurring elsewhere the same or similar items or services defaulted by SELLER hereunder, provided such SELLER'S reprocurement expenses obligation shall be limited to the excess over the price specified herein for such items or services.
5. **INDEMNIFICATION** - SELLER shall indemnify, defend, and save harmless DISTRICT from and against any loss, damage, claim, or harm for bodily injuries, including death, or damage to property caused by SELLER or its employees, subcontractors, or suppliers in connection with the performance of this agreement.
6. **ASSIGNMENTS AND SUBCONTRACTORS** - Neither this agreement nor any interest herein nor claim hereunder may be assigned by SELLER either voluntarily or by operation of law, nor may all or substantially all of this agreement be further subcontracted by SELLER without the prior written consent of DISTRICT. No consent shall be deemed to relieve SELLER of its obligations to comply fully with the requirements hereof.
7. **FEDERAL, STATE AND LOCAL LAWS** - SELLER warrants that in the performance of this agreement it shall comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder.
8. **INFRINGEMENT INDEMNITY** - In lieu of any other warranty by DISTRICT or SELLER against infringement, statutory or otherwise, it is agreed that SELLER shall defend at its expense, any suit against DISTRICT based on a claim that any item furnished under this agreement or the normal use or sale thereof infringes any United States Letters Patent or copyright and shall pay cost and damages finally awarded in any such suit, provided that SELLER is notified in writing of the suit and given authority, information, assistance at SELLER'S expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, SELLER, at no expense to DISTRICT, shall obtain for SELLER the right to use and sell said item, or shall substitute an equivalent item acceptable to DISTRICT and extend this patent indemnity hereto.
9. **SELLER'S WARRANTIES** - SELLER warrants all goods and materials to meet the specification or other requirements of this order. DISTRICT may return any goods or materials which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods or materials shall, unless used by DISTRICT, remain the property of SELLER and may be returned at SELLER'S risk and expense. SELLER shall reimburse DISTRICT for all prior payments therefor and/or costs incurred in connection with delivery or return of such goods or materials.
10. **DELAYS** - SELLER will not be held liable for failure or delay in the fulfillment if hindered or prevented by fire, strikes or Acts of God.
11. **TITLE AND RISK OF LOSS** - Unless otherwise provided in this agreement, SELLER shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this agreement at the F.O.B. point specified herein, and upon such delivery title shall pass from SELLER and SELLER'S responsibility for loss or damage shall cease, except for loss or damage resulting from SELLER'S negligence. Passing of title upon such delivery shall not constitute acceptance of the item by DISTRICT.
12. **NOTICE OF LABOR DISPUTE** - Whenever SELLER has knowledge that any actual or potential labor dispute may delay this agreement, SELLER shall immediately notify and submit all relevant information to DISTRICT. SELLER shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this agreement. However, any subcontractor need give notice and information only to its next higher tier subcontractor.
13. **EQUAL EMPLOYMENT OPPORTUNITY** - In connection with the execution of this agreement, the SELLER shall not discriminate against any employee or applicant because of race, religion, color, gender, marital status or national origin. The SELLER shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, gender, marital status or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
14. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)** - In connection with the performance of this agreement, the SELLER will cooperate with the DISTRICT in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged business Enterprises, and SELLER will use its best efforts to insure that Disadvantaged Business Enterprises shall have an equitable opportunity to compete for subcontract work under this agreement.
15. **PROHIBITED INTEREST** - SELLER covenants that no member of, or delegate to, the Congress of the United States shall have any interest, direct or indirect, in the agreement or the proceeds hereof SELLER further covenants that, for the terms of this agreement, no director, member, officer, or employee of DISTRICT during his tenure in office or one (1) year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof
16. **TERMINATION FOR CONVENIENCE** - DISTRICT may terminate this agreement at any time by giving written notice to SELLER of such termination, effective on the date of such notice. Upon receipt of said notice, SELLER shall immediately take action not to incur any further obligations, costs, or expenses, except as may be reasonably necessary to terminate its activities. All finished or unfinished documents and other materials procured or produced by SELLER hereunder shall, at the option of DISTRICT, become DISTRICT'S property upon the date of such termination. DISTRICT shall pay SELLER its allowable costs incurred to date of that portion terminated.
17. **AUDIT AND INSPECTION OF RECORDS** - SELLER shall provide DISTRICT such access to SELLER'S books, records and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. SELLER shall maintain such books, records, data, documents and activities related to the goods or services described herein. SELLER shall maintain such books, records, data and documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during SELLER'S performance hereunder and for a period of four (4) years from the date of final payment by DISTRICT hereunder.
18. **ENTIRE AGREEMENT; NO ORAL MODIFICATIONS** - This agreement constitutes the entire agreement and understanding between DISTRICT and SELLER, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth in this agreement. Any amendments to this agreement must be in writing and executed by both parties hereto.