

KERN COUNTY PURCHASE ORDER TERMS & CONDITIONS

Vendors must comply with all instructions, and the following conditions shall apply to any order awarded pursuant to this Purchase Order:

1. Kern County is exempt from payment of federal excise tax (federal excise tax exemption certificate #95 74 0105 K). No federal tax should be included in the price. Exemption certificates will be furnished when applicable.

2. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.

3. Any public works contract for material and labor exceeding \$1,000 shall be subject to the prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code.

4. In case of default by the vendor, the County of Kern may procure the articles or services from other sources and may deduct any additional costs from the unpaid balance due the vendor or may collect against any bond or surety for excess costs so paid. If the unpaid balance due vendor is insufficient to cover any additional costs, vendor agrees to immediately reimburse Kern County said additional costs upon request. The prices paid by the County shall be considered the prevailing market price at the time such purchase is made.

5. Vendor will not be held liable for failure or delay in the fulfillment of an order if hindered or prevented by fire, strikes, or acts of God.

6. The County Auditor's office pays claims and Purchase Orders each week. Therefore, it is the policy of the County to take any and all discounts identified in this Purchase Order without regard to the date of invoice.

7. This Purchase Order, including any attachments hereto, contains the entire agreement between the County and Vendor relating to the goods and/or services identified herein. Any agreement or terms and conditions submitted to the Purchasing Division or any Kern County department or employee after the issuance of this Purchase Order, or any terms and conditions contained in or referred to in any invoice from vendor, shall be void and of no force or effect.

8. Vendor agrees to indemnify, defend and hold harmless County and County's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by County, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of vendor or vendor's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons, damage to any property, regardless of where located, including the property of County; and any workers' compensation claim or suit arising from or connected with any services performed by or on behalf of vendor by any person or entity. Further, Vendor shall indemnify, defend and hold the County of Kern, its officers, agents, servants and employees harmless from liability of any nature or kind as a result of Kern County's use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, or articles or appliances furnished or used under any purchase order.

9. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by the County Risk Manager:

(a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.

(b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the County Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(c) **Automobile Liability Insurance** against claims of Personal Injury (including bodily Injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to any Purchase Order or agreement with the County with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

(d) **Professional Liability (Errors and Omissions) Insurance** for liability arising out of, or in connection with the performance of all required services under this Purchase Order or agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate unless otherwise indicated by the County Risk Manager.

The Commercial General Liability Insurance shall include an endorsement naming the County and County's board members, officials, officers, agents and employees as additional insureds. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by the County. Any exception to these requirements must be approved by the County Risk Manager. The County Risk Manager may require higher limits depending on the nature of the goods and/or services being provided. All insurance coverage requirements shall be maintained by vendor until completion of all of vendor's obligations to the County, and shall not be reduced, modified or canceled without 30 days prior written notice to the County Purchasing Agent.

10. Public agencies contracting with the County have the option to participate under any bid award upon which this Purchase Order is based, with the same terms and conditions, including price. Such public agencies shall accept sole financial responsibility for making payments to the vendor for all goods and services purchased by them.

11. Vendor shall comply with all applicable County, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

12. County and vendor agree that the provisions of this Purchase Order or agreement will be construed pursuant to the laws of the State of California, and that venue of any action relating thereto shall be in the Superior Court of and for Kern County.

13. By signing the County PO terms and conditions, vendor agrees that in the event there is any inconsistency or conflict between the County of Kern Purchase Order terms and conditions and your company's terms and conditions, the County of Kern Purchase Order terms and conditions shall control.

14. Suspension and Debarment

a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined as 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by County. If it is later determined that Contractor did not comply with 2 C.F.R. pt 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, the Federal Government may pursue additional remedies, including but not limited to suspension and/or debarment.

15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352

a. Contractor may not use the funds received from this 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 the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

16. Use of Recovered/Recycled Materials

a. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- ii. Meeting Agreement performance requirements; or
- iii. At a reasonable price.

b. Information about this requirement, along with a list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Appendix A to Kern County Purchase Order Terms and Conditions

This Appendix A shall apply if and only if this purchase order is issued pursuant to a competitive bidding process (Formal Bid Type 1 – Quotation Request or Formal Bid Type 2 – Best Value Bid and Informal Bid process such as a Fast Track bid.) In addition to the Kern County Purchase Order Terms and Conditions, Vendor agrees to comply with all instructions in the bid packet, and to comply with the following terms and conditions in any order awarded pursuant to this proposal.

- 1. The return of a signed copy of this form shall constitute a promise to supply and/or perform the enumerated goods and/or services pursuant to the terms and conditions and at the prices stated herein.
- 2. The Purchasing Agent reserves the right to reject any or all bids.
- 3. Lump sum bids for labor and materials shall include all applicable tax.
- 4. Vendor shall be considered in default if it does not deliver the articles or services in accordance with the bid specifications and/or the delivery schedule and location indicated in the Purchase Order. The County, in its sole discretion, may allow Vendor ten (10) days in which to cure any default. Vendor will only be paid for the articles or services that are delivered on time, in accordance with the Purchase order and accepted by the County.
- 5. All shipping costs on deliveries which do not meet the County's specifications shall be paid for by the vendor.
- 6. Cash discounts offered for payment within less than 20 days from date of delivery will not be considered when making an award.
- 7. The Purchasing Agent may award to one vendor or split the award among multiple vendors. The right is hereby reserved to make partial awards to more than one vendor if the Purchasing Agent considers this procedure to meet the procurement objectives of the County.
- 8. Information regarding the results of quotations may be obtained at the Kern County Purchasing Department, 1115 Truxtun Avenue, 3rd Floor, Bakersfield, CA (mailing address: 1115 Truxtun Avenue, 3rd Floor, Bakersfield, CA 93301), for a period of 90 days from the due date of the quotation. Detailed quotation tabulations are not, as a matter of practice, given out over the telephone or by mail.
- 9. Pursuant to Kern County Ordinance Code section 2.38.131, the Local Vendor Preference will be implemented.
- 10. Pursuant to Kern County Ordinance Code section 2.38.151, the County may award to other than the low bidder, if approved by the Board of Supervisors.
- 11. All addendums to this Quotation Request, Best Value Bid or Informal Fast Track Bid shall come directly from the Purchasing Agent. Any changes, either written or oral, from other than the Purchasing Agent shall be null and void. All questions or inquiries shall be made directly to the responsible Buyer.
- 12. All bids which, in the County's opinion, substantially conform to the functional requirements specified in the bid documents will be considered. The County shall award the agreement or Purchase Order to the vendor or vendors that submit a bid that substantially conforms to the stated requirements, thereby meeting the needs of the department, and is in the best interests of the County, as determined by the County in its sole discretion.

a. Additional Services: The County reserves the right to negotiate with the successful vendor to add additional services under the awarded agreement or Purchase Order as deemed necessary. Such additions shall be made by written amendment or change order signed by both parties.

13. ALL QUOTES ARE SUBJECT TO ANY TERMS AND CONDITIONS STATED IN THE COUNTY BID DOCUMENTS.

14. All price quotes shall remain valid for a minimum of thirty (30) days following the deadline for the County's receipt of bids, even if the Vendor identifies a shorter time period in their bid.

15. The County has determined that the work contemplated by this Agreement falls within the definition of "Public Works" set forth in the California Labor Code. Contractor acknowledges that Contractor is fully aware of prevailing wage requirements for public works projects as set forth in Article 2 (commencing with section 1770) of Chapter 1, Part 7 of the California Labor Code ("Prevailing Wage Requirements") and Contractor agrees to comply with the provisions of that Article to the extent the Prevailing Wage Requirements are applicable to the work conducted under this Agreement. Contractor further agrees that to the extent applicable, Contractor shall require any subcontractor it contracts with to comply with the Prevailing Wage Requirements. Contractor also agrees to indemnify, defend (upon request of County) and hold County, its officers, agents and employees, harmless from all claims, costs, causes of action, attorney fees, damages or liability from the failure of Contractor or Contractor's subcontractors to comply with the Prevailing Wage Requirements.

The Department of Industrial Relations of the State of California has determined the general prevailing rate of wages for each craft, classification or type of workers needed in the execution of contracts under the jurisdiction of Kern County. The schedule of rates can be obtained from www.dir.ca.gov/dlsr or are on file with the office of the Department of General Services, 1115 Truxtun Ave., 3rd Floor, Bakersfield, CA, 93301, and is by this reference incorporated herein.

Prevailing wage rates apply to all Public Works projects over \$1,000.00.

16. If your company desires to use any agreement or other terms and conditions relative to the goods and/or services specified in this Quotation Request, Best Value Bid or Informal Fast Track Bid, they must be provided to the Purchasing Division with your bid. If such an agreement or terms and conditions are not submitted with the bid, it is agreed by both parties hereto that only the terms and conditions contained in this Quotation Request, Best Value Bid or Informal Fast Track Bid and any resulting purchase order shall apply to the purchase of such goods and/or services by County. Any agreement or terms and conditions received by the County or any of its employees after submission of the bid or referenced in any invoice from vendor shall be void and of no force or effect. If the vendor submits any agreement or terms and conditions, that submission will be one of the factors that will be considered by the Purchasing Division during the selection process and could result in a vendor not being selected by Purchasing.

I (We) agree to supply or perform subject to the printed terms and conditions noted on this form titled Kern County Purchase Order Terms and Conditions and Appendix A to Kern County Purchase Order Terms and Conditions.

Rev. 3/2019

BY: _____
SIGNATURE

PRINT NAME & TITLE

DATE: _____