

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

The general rules and conditions which follow apply to all purchases and become a definite part of each formal invitation for bid, purchase order or other award issued by the County Purchasing Agent unless otherwise specified. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.

Subject to State and County laws and all rules, regulations and limitations imposed by legislation of the Federal Government, bids on all advertisements and invitations issued by the Office of Central Services will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the Invitation for Bid.

CONDITIONS OF BIDDING

1. **Proposal Forms:** Bids shall be submitted only on the forms provided by the County. The bidder shall retain one copy for his files and submit one copy signed and sealed..
2. **Late Bids:** Bids or proposals or amendments thereto must be received in the Contract Administration and Procurement Division office or other such location as designated herein not later than the scheduled time and date for bid opening/closing, or closing date and time for receipt of proposals. Bids or proposals received (and time stamped) after the scheduled time will be considered late and returned to the sender unopened. Postal delays or misrouting shall not constitute a basis for acceptance of late bids or proposals.
3. **Withdrawal or Modification of Bids or Proposals:** A written request for the withdrawal of a bid or proposal, or modification of a bid, may be granted if the request and the envelope containing the request is identified with the Bid or Proposal number, title, time and date of bid opening/closing, or closing date for receipt of proposals, and is received in the Contract Administration and Procurement Division office prior to the scheduled bid opening/closing time or closing time and date for receipt of proposals.
4. **Mailing of Bids:** In the event that the bid contains bulky subject material, Bidders should make efforts to ensure their Bids are securely packaged such that they arrive at the Office of Central Services intact.
5. **Completeness:** All information required by Invitation to Bid must be supplied to constitute a proper bid.
6. **Bids Binding 60 Days:** Unless otherwise specified all formal bids submitted shall be binding for 60 calendar days following bid opening/closing date, unless the bidder(s), upon request of the Purchasing Agent, agrees to an extension.
7. **Conditional Bids:** Qualified bids are subject to rejection in whole or in part.
8. **Bids for All or Part:** Unless otherwise specified by the County or by the bidder, the Purchasing Agent reserves the right to make award on all items, or on any of the items according to the best interests of the County. Bidder may restrict a bid to consideration in the aggregate by so stating, but should name a unit price on each item bid upon; any bid in which the bidder names a total price for all the articles without quoting a price on each separate item, may be rejected at the option of the County.
9. **Errors in Bids:** When an error is made in extending total prices, the unit bid price will govern. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the bidder. Erasures or changes in bids must be initialed.
10. **Questions Re Specifications:** Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening/closing of bids. Inquiries received within five (5) days of the date set for the opening/closing of bids will not be given consideration. Any interpretation made to prospective bidders will be expressed in the form of an addendum to the specifications which, if issued, will be sent to all prospective

bidders no later than three (3) days before the date set for opening/closing of bids. Oral answers will not be binding on the County.

11. **Response to Invitations:** In the event you cannot submit a bid on our requirements, as set forth in the "Invitation, Bid, and Agreement" attached hereto, please return the Invitation, Bid, and Contract form with an explanation as to why you are unable to bid on these requirements.

12. **Multiple Bids:** No bidder will be allowed to offer more than one price on each item even though he may feel that he has two or more types or styles that will meet specifications. Bidders must determine for themselves which to offer. IF SAID BIDDER SHOULD SUBMIT MORE THAN ONE PRICE ON ANY ITEM-ALL PRICES FOR THAT ITEM MAY BE REJECTED AT THE DISCRETION OF THE COUNTY PURCHASING AGENT.

13. **Taxes:** Prince George's County is exempt from the following taxes: (a) State of Maryland by Certificate No. 3000-124-3; (b) District of Columbia Sales Tax by Exemption No. 9199-79411-01; (c) Manufacturers Federal Excise Tax Registration No. 52710247-K. Bulletin 73-1 issued by the State of Maryland's Comptroller of the Treasury which states in part that contractors and subcontractors who bid on jobs to construct realty for County governments must pay the retail sales tax on all materials, equipment, and supplies purchased to complete their contract. Further, they must pay sales tax on rental tools and equipment used in connection with the contract. Equipment purchased by such contractors from out-of-state vendors is subject to the tax when brought to Maryland.

14. **Catalogs:** Each bidder shall submit in duplicate where necessary or when requested by the Purchasing Agent, catalogs, descriptive literature, and detailed drawings, fully detailing features, designs, construction, finishes and the like necessary to fully describe the material or work the bidder proposes to furnish.

15. **Competency of Bidders:** The County reserves the right to reject any bid or proposal from any person, firm or corporation that is in arrears or in default to Prince George's County upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said County, or had failed to perform faithfully any previous contract with the County. The bidder, if requested, must present within 48 hours evidence satisfactory to the Purchasing Agent of performance ability and possession of necessary facilities, pecuniary resources and adequate insurance to comply with the terms of these specifications and contract documents.

16. **Access to Information About Hazardous and Toxic Substances Act:** In accordance with Subtitle 32 of the Maryland Occupational Safety and Health Law: If any product or substance being offered herein is classified as either a "Hazardous Chemical" or a "Health Hazard" as defined therein, then bidder shall submit with the bid a material safety data sheet for each product or substance being offered. Failure to comply with this requirement may result in bid being declared non-responsive. Additionally, bidder agrees (by virtue of bid submittal) to comply with all provisions of Subtitle 32.

BID DEPOSIT

17. **Bid Bond, Certified or Cashier's Check:** When required, each bid shall be accompanied by a bid bond signed by a surety company authorized to do business in the State of Maryland. An annual bid bond on file with the County with an uncommitted balance equal to the bid shall be acceptable as surety. The County will also accept a cashier's check, certified check, U.S. Postal Money Order, or Treasurer's check drawn on a responsible bank doing business in the United States, which is made payable to Prince George's County, Maryland. When computing amount of Bid for certified check purposes, do NOT deduct for trade-ins.

18. **Annual Bid Bonds:** Bidders who regularly do business with the County shall be permitted to file with the Contract Administration and Procurement Division an annual bid bond in the amount specified below. Such annual bonds shall be acceptable as Surety in lieu of the furnishing of surety with each individual transaction. Annual bid bonds shall be in an amount as determined by the bidder, of no less than \$2,000. If at any time, the requirements of a specific bid invitation exceeds the amount of the annual bid bond, or should the aggregate amount of the bid security requirements on all unresolved bids submitted by your firm exceed the amount of the annual bid bond, additional surety will be required in the appropriate sum.

19. **Performance Bond:** The successful bidder or bidders on this bid must furnish a performance bond as indicated on the bid cover, made out to Prince George's County, Maryland, prepared on an approved form, as security for the faithful performance of his contract, within ten days of notification that the bid has been accepted. The surety thereon must be such surety company or companies as are authorized and licensed to transact business in the State of Maryland. Attorneys in fact who sign bid bonds must file with each bond a certified copy of their power of attorney to sign said bonds. The successful bidder or bidders upon failure or refusal to furnish within ten days after his notification the required performance bond shall forfeit to Prince George's County, Maryland, as liquidated damages their bid deposit. As a written condition of a procurement award or procurement contract authorized under the Procurement Code, the Purchasing Agent or the Purchasing Agent's designee may require an award recipient, excluding County-based small businesses, to provide bid, performance, and/or payment bonding assistance to County-based small business in order to assist in complying with the County laws requiring County-based business participation.

20. **Samples:** The samples submitted by bidders on items which they have received an award may be retained by the County until the delivery of contracted items is completed and accepted. Bidders whose samples are retained may remove them after delivery is accepted. Samples on which bidders are unsuccessful must be removed as soon as possible after award has been made on the item or items for which the samples had been submitted. The County will not be responsible for such samples if not removed by the bidder within 30 days after the award has been made. Bidders shall make all arrangements for delivery of samples to the place designated as well as the removal of samples. Cost of delivery and removal of samples shall be borne by the bidder. All samples packages shall be marked "Samples for Purchasing Division" and each sample shall bear the name of the bidder, item number, and shall be carefully tagged or marked in a substantial manner. Failure of the bidder to clearly identify samples as indicated may be considered sufficient reason for rejection of bid.

SPECIFICATIONS

21. **Trade Names:** In cases where an item is identified by a manufacturer's name, trade name, catalog number or reference, it is understood that the bidder proposes to furnish the item so identified and does not propose to furnish an "equal" unless the proposed "equal" is definitely indicated therein by the bidder. The reference to the above catalog is intended to be descriptive but not restrictive and only to indicate to the prospective bidder articles that will be satisfactory. Bids on other makes and catalogs will be considered, provided each bidder clearly states on the face of his proposal exactly what he proposes to furnish, and forwards with his bid, a cut, illustration, or other descriptive matter which will clearly indicate the character of the article covered by his bid. The Purchasing Agent hereby reserves the right to approve as an equal, or to reject as not being an equal, any article the bidder proposes to furnish which contains major or minor variations from specification requirements but may comply substantially therewith.

If no particular brand, model, or make is specified, and if no data are required to be submitted with the bid, the successful contractor after award and before manufacture or shipment, may be required to submit working drawings or detailed descriptive data sufficient to enable the Purchasing Agent to judge if each requirement of the specifications is being complied with.

22. **Formal Specifications:** The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications, and drawings. Whenever herein mention is made of any article, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. standards, or similar expressions, the requirements of these laws, standards, etc., shall be construed as to the minimum requirement of these specifications. All deviations from the specifications must be noted in detail by the bidder, in writing, at the time of submittal of the formal bid. The absence of a written list of specification deviations at the time of submittal of the bid will hold the bidder strictly accountable to the County to the specifications as written. Any deviation from the specifications as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or equipment when delivered.

AWARD

23. **Award or Rejection of Bids:** The contract will be awarded to the lowest evaluated responsive and responsible bidder. Pursuant to County Code Section 10A-161(f), for any procurement contract greater than Five Hundred Thousand Dollars (\$500,000) in value, where the lowest evaluated bid from a responsive bidder is not from a County-based small business, the lowest bidding responsible and responsive County-based small business shall be given a final opportunity by the Purchasing

Agent or the Purchasing Agent's designee to offer a responsive bid less than the lowest responsive bid and thus win the procurement award. In determining a bid, applicable bid or price preferences shall be applied.

The Purchasing Agent reserves the right to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the County. The Purchasing Agent also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature or a bid of a bidder for whom an investigation shows is not in a position to perform the contract.

In determining responsibility, the following qualifications, in addition to price, will be considered by the Purchasing Agent.

- a. The ability, capacity and skill of the bidder to perform the service required within the specified time.
- b. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- c. The quality of performance of previous contracts or services.
- d. The previous and existing compliance by the bidder with laws and ordinances relating to previous contracts with the County and to the bidder's employment practices.
- e. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.
- f. The quality, availability, and adaptability of the supplies, or contractual services, to the particular use, required.
- g. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- h. Whether the bidder is in arrears to the County, in debt on contract or is a defaulter on surety to the County or whether the bidder's taxes or assessments are delinquent.
- i. The resale value and life cycle costs of the subject of the contract.
- j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to make the award.

In determining a bidder's responsiveness, the Purchasing Agent shall consider material deviations from the advertised specifications which materially affect price, quantity, quality or limit the bidder's liability.

24. Indemnity: Contractor shall indemnify, keep and save harmless the County, its agents, officials and employees, against all injuries, death, loss damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the County in consequence of the granting of this contract of which may in anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the contractor or his employees, of the subcontractor or his employees, if any, and the contractor shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the County in any such action, the contractor shall at his own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

25. Collusive Bidding: The bidder certifies that his bid is made without any previous understanding, agreement of connection with any person, firm, or corporation making a bid for the same project without prior knowledge of competitive prices, and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

26. Identical Bidding - Executive Order No. 10946: All identical bids submitted to the County as a result of advertised procurement for materials, supplies, equipment or services exceeding \$1,000.00 in total amount shall, at the discretion of the County, be reported to the Attorney General of the United States in accordance with Form DJ-1510 and the Presidential Order dated April 24, 1961 for possible violation and enforcement of antitrust laws.

27. **Conflict of Interest:** As a prerequisite for the payment pursuant to the terms of this contract, there shall be furnished to the County a statement, under oath that no member of the elected governing body of Prince George's County, or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the elected governing body has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any other similar form of remuneration and/or on account of the acts of awarding and/or executing the contract and that upon request by the County, as a prerequisite to payment pursuant to the terms of this contract, there will be furnished to the requester, under oath, answers to any interrogatories related to a possible conflict of interest as herein embodied. Any contract made or entered into where it is discovered that the violation of the intent of this provision exists shall be declared null and void and all monies received by the contractor shall be returned to the County. Whenever any person shall be convicted of a falsely executing a statement under oath, as required above, such person shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment not exceeding six (6) months, or both such fine and imprisonment. The provisions of the "Vendor's Oath and Certification" which is attached hereto apply to any contract entered into by Prince George's County, Maryland.

28. **Statement of Ownership - CB 1-1992:** Each and every individual whether a sole proprietor, partnership, limited partnership, joint stock company, association, corporation or any other form of business entity responding to a bid solicitation shall provide a statement of the ownership and shall contain:

- a. A statement by the business entity or its authorized representative listing the name or names as well as the business and residence address of all those individuals having a ten percent (10%) financial interest in the business entity.
- b. A corporation shall file a statement listing the officers of the corporation, their business and residence addresses, the date of which they assumed their respective offices, a list of the current Board of Directors, their business and residence addresses as well as the date on which each Director assumed his office and the date of which his term shall expire.
- c. In addition to the requirement set forth in (a) above, a corporation must file a statement containing the names and residence addresses of those individuals owning at least ten percent (10%) of the shares of any class of corporate security, including but not limited to, stocks of any type or class and serial maturity bonds of any type or class.
- d. Any statement filed pursuant to CB 1-1992 shall be valid for a period of one year from the date it is filed, provided that the information contained therein is updated as necessary upon the award of any subsequent contract.
- e. No contract shall be finally awarded unless there has been compliance with the provisions of this section.

29. **Bidders Qualification Statement:** Every person, upon submitting a bid proposal or other application for a contract with a public body, shall submit an affidavit stating to its best knowledge whether it or any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:

- (1) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;
- (2) been convicted under a State or federal law or statute of any offense enumerated in Section 16-203; or
- (3) been found civilly liable under a State or federal antitrust statute as provided in Section 16-203.

30. **Brokering:** The County shall not contract with any broker unless brokering is a standard practice in the applicable industry with respect to which such contract relates or as provided by the waiver of the Purchasing Agent.

31. **Reseller and Distributors for Commodities:** In the procurement of commodities for which manufacturers or publishers of such commodities utilize authorized resellers or distributors, including, but not limited to, information technology software and hardware products:

(a) The County shall procure such commodities solely from County-based small businesses that are authorized resellers or distributors if (1) there are County-based small businesses that are authorized resellers or distributors of such commodities, and (2) such businesses are authorized as resellers or distributors by the publisher or manufacturer of such commodities.

(b) The County is authorized to procure such commodities directly from the manufacturer or publisher only if the requirements of Subsection (a), above, are not met.

31. **Notice of Acceptance:** A written award (or acceptance of bid) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the Invitation to Bid shall be deemed to result in a binding contract without further action by either party.

32. **Tie Bids:** If two or more bids are equally qualified for award, the bid shall be awarded in the following order: County-based small business, County-based minority business enterprise, County-based business, other minority business enterprise, Maryland-based business, and any other fair and equitable manner determined by the Purchasing Agent.

33. **Specific Bid Quantities:** Where quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless contractor furnishes the Purchasing Agent with a statement of unordered balances not less than ten days after the termination date of the contract.

34. **Requirements Bid Quantities:** On "Requirements" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered.

35. **Protests:** Any bidder which alleges that it has been or will be improperly denied the award of bid may protest the decision or potential decision of the County after the receipt and opening/closing of bids. Any protest shall be in writing and filed in duplicate with the County Purchasing Agent in an envelope marked "PROTEST." The protest shall set forth the identity of the protestor, the identity of the procurement activity, the basis for the protest, including supporting exhibits and documents which substantiate the protestor's allegations. All protests shall be delivered not later than seven (7) days after the protestor knew or should have known of the facts and circumstances upon which the protest is based. Based upon the information contained in the protest, the Purchasing Agent may schedule a hearing or issue a decision based upon the record. If a hearing is granted, it shall be scheduled promptly and a written decision shall be issued as expeditiously as possible.

Protests based upon alleged improprieties in any type of solicitation which are apparent before bid opening/closing or the closing date for receipt of proposals shall be delivered before bid opening/closing or closing date for receipt of proposals. Protests not delivered within the time periods specified above shall be untimely.

CONTRACT PROVISIONS

36. **Certification by Purchasing Agent:** Prior to the execution of any procurement contract or agreement (to include extensions or renewals) subject to 10A-112, 10A-113, 10A-114 or 10A-115 of Division 7 of the Procurement Code, the Purchasing Agent or designee shall certify in writing that such procurement is in full compliance with the applicable provision of Division 7 or the procurement shall be rendered "void and illegal". Where a procurement award contract or agreement is rendered "void and illegal", it shall mean terminated for convenience and shall not create a right of legal action or damages against any party.

37. **Availability of Funds:** A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles. The County's extended obligation on those contracts which envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following fiscal year.

38. **Contract Alterations:** No alterations or variables in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his authorized agent.

39. **Expiration of Contracts:** Contracts will remain in force for full periods specified and until all articles ordered before date of expiration shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to the expiration date.
- b. Extended upon written authorization of the Purchasing Agent to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

39. **Subletting of Contract:** It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet, or otherwise dispose of his contract or his right, title or interest therein, or his power to execute such contract, to any other person, firm or corporation, without the previous written consent of the County Purchasing Agent, but in no case shall such consent relieve the contractor from his obligations, or change the terms of the contract.

40. **Default Remedies:** The contract may be canceled or annulled by the Purchasing Agent or his designee in whole or in part by written notice of default to the contractor for any of the following reasons: failure to perform in accordance with contract specifications, failure to make timely delivery of supplies or services as stipulated in the bid or proposal, violation of any contract term, suspension or debarment for reasons of civil or criminal indictment or conviction, failure to prosecute the work or any separable part thereof with such diligence as to insure its completion within the time specified in the contract, or any extension thereof, fraud or misrepresentation on a County contract, failure to make timely replacement or correction of rejected articles or services or failure to maintain at all times during the contract term compliance with the County-based business participation requirements. In the event of partial termination for default, the contractor shall continue the performance of the contract to the extent not terminated.

In the event of default by the contractor, the County may reprocur similar articles or services in such manner as to facilitate the most expeditious delivery or performance.

The Bidder/Offeror agrees by virtue of submitting a bid or proposal in response to this solicitation, that the contractor is obligated to the County for any excess reprourement costs incurred by the County as a result of the contractor's default. Excess reprourement costs shall be defined as the difference between the defaulting contractor's contract price and the price paid by the County for similar goods or services, plus any additional costs incidental by accelerating delivery, and any reasonable administrative expenses incurred by the County in making the reprourement.

The contractor agrees by submitting a bid or proposal that such excess reprourement costs may be recovered by the County by: 1) deduction of such amount from monies owed the contractor on this or any other contract(s) the contractor may have with the County, 2) by recourse to the contractor's surety, 3) by direct payment by the contractor to the County or 4) legal action against the contractor.

41. **Termination For Convenience:** The performance of work under this contract may be terminated by the County within 30 days written notice or such time as mutually agreeable to the parties not to exceed 30 days, in accordance with this clause in whole, or from time to time in part, whenever the Purchasing Agent shall determine that such termination is in the best interest of the County. In the event of such termination, the County shall compensate the contractor fair and equitably for all goods and services provided up to the date of termination. However, the contractor shall not be paid any damages or reimbursed for any anticipatory profits that have not been earned up to the date of termination. Where a procurement award contract or agreement is rendered "void and illegal" it shall mean terminated for convenience and shall not create a right of legal action or damages against any party.

42. **Liability:** The contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion is beyond the control of the contractor. Under such circumstances, however, the Purchasing Agent may in his discretion, cancel the contract.

43. **New Goods, Fresh Stock:** All contracts, unless otherwise specifically stated, shall produce new commodities, fresh stock, latest model, design or pack.

44. **Non-Discrimination:** A contractor who is the recipient of County Funds, or who proposes to perform any work or furnish any goods under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public because of religion, race, sex, age, physical or mental disability, or perceived disability. Discriminatory practices based upon the foregoing are declared to be contrary to the public policy of the County. Contractor agrees to be in full compliance with the federal mandates of the Americans with Disabilities Act. Contractor further agrees that this article will be incorporated by contractor in all contracts entered into with suppliers of materials or services; and contractors and subcontractors and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor services in connection with this contract.

45. **Guarantee:** Unless otherwise specified, the contractor shall unconditionally guarantee the materials and workmanship on all equipment furnished by him for a period of one year from date of acceptance of the items delivered and installed, unless otherwise specified herein. If, within the guarantee period, any defects or signs of deterioration are noted, which, in the opinion of the County are due to faulty design and installation, workmanship, or materials, upon ratification, the contractor, at his expense, shall repair or adjust the equipment or parts to correct the condition, or he shall replace the part or entire unit to the complete satisfaction of the County. These repairs, replacements or adjustments shall be made only at such time as will be designated by the County.

46. **Placing of Orders:** Orders against contracts may be placed with the contractor on a Purchase Order executed and released by the Purchasing Agent or designee. Telephonic orders placed directly with the contractor by the ordering agency may be authorized by the Purchasing Agent, only after execution of a Blanket Purchase Order.

47. **Provision for Other Agencies:** Unless otherwise stipulated by the bidder, the bidder agrees when submitting his bid that he will make available to all County agencies and departments, bi-county agencies, in-county municipalities, the bid prices he submits in accordance with the bid terms and conditions, should any said department or agency wish to buy under the awarded contract. .

48. **Delinquent Tax Setoffs:** In the event that the contractor owes money to the County as a result of the entry of judgment, debt arising out of a contract, default as surety to the County, delinquent taxes or assessments or for any other debt or liquidated damages, the County may withhold and set-off such sums owed to the County from payments owed to the contractor by virtue of this or other contracts.

49. **Prompt Payment:**

(a) Contractor shall pay each of its subcontractors (including a material supplier) for satisfactory performance under the respective subcontract within seven (7) calendar days after receipt of such amounts that are paid to the Contractor by the County for such work performed under the contract. In the event that there is a good faith dispute over all or any portion of the amount due on a payment from Contractor to a subcontractor, Contractor may withhold the disputed amount but shall pay the undisputed amount. A subcontractor who further subcontracts work on procurement projects is responsible for the same requirements and interest penalties for payment to its subcontractors (lower tier subcontractors) after receiving payment as applicable to a prime contractor.

(b) Interest penalties. In the event Contractor violates paragraph (a) above, Contractor shall pay to the subcontractor a penalty of one and a half percent (1.5%)(or such other amount as identified in County Code Section 10A-153) of the amount due per month for every month to the subcontractor owed payment or portion thereof that payment is not made. Interest penalties shall accrue daily beginning eight (8) calendar days after payment is received by Contractor (or higher tier subcontractor) and ending on, but excluding, the payment date, using the rate established in this Paragraph calculated on a monthly (30-day) basis. This requirement is enforceable in the Circuit Court of Prince George's County, and is not intended to create a private right of action against the County. Willful violations of this requirement may also result in a contractor being suspended or debarred.

(c) Contractor shall include in each of its subcontracts: (1) a payment clause which obligates Contractor to pay the subcontractor for satisfactory performance under its subcontract within seven (7) days out of such amounts as are paid to Contractor by the County for such work performed under such contract; (2) an interest penalty clause which obligates Contractor to pay to the subcontractor in the case of each payment not made in accordance with the payment clause

included in the subcontract (i) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (ii) computed at a rate of one and a half percent (1.5%) of the amount due per month for every month (or such other percentage as identified in County Code Section 10A-153); and (3) a clause in its subcontracts requiring the subcontractor to (i) include a payment clause and an interest penalty of one and a half percent (1.5%) (or such other percentage as identified in County Code Section 10A-153) of the amount due per month for every month in each of its subcontracts, and (ii) requiring each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

50. **Requirement Electronic Payments:** County Vendors are required to enroll in Automated Clearing House (ACH) or similar electronic payment system with the County.

DELIVERY PROVISIONS

51. **Responsibility for Materials Shipped:** The contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection unless public health and safety require immediate destruction or other disposal of rejected delivery. Upon failure to do so within ten days after date of notification, the County may return the rejected materials or supplies to the contractor at his risk and expense, or dispose of them as its own property.

52. **Inspections:** Inspection and acceptance of materials or supplies will be made after delivery. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies that are not in accordance with the specifications. All delivered materials shall be accepted subject to inspection and physical count.

53. **Time of Delivery:** Deliveries will be accepted between 8:30 a.m. and 4:00 p.m. on weekdays only. No deliveries will be accepted on Saturdays, Sundays, County Holidays or days the County is closed to the public.

54. **Packing Slips or Delivery Tickets:** ALL SHIPMENTS or DELIVERIES shall be accompanied by Packing Slips or Delivery Tickets, and shall contain the following information for each item delivered:

- The Purchase Order Number
- The Name of the Article and Stock Number (Supplier's)
- The Quantity Ordered
- The Quantity Shipped
- The Quantity Back Ordered
- The Name of the Contractor

Bidders are cautioned that failure to comply with these conditions SHALL BE CONSIDERED SUFFICIENT REASON FOR REFUSAL TO ACCEPT THE GOODS.

55. **General Guaranty:** Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented, invention, article or appliance furnished or used in the performance of the contract which the contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind, to the building or equipment, to his own work or to the work of other contractors, for which he or his workmen is responsible.
- d. Pay for all permits, licenses, and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County and State of Maryland.

56. **Cartage:** No charge will be allowed for cartage on packages unless by special agreement, in writing, by the Purchasing Agent.