

# CITY OF PHILADELPHIA

## TERMS AND CONDITIONS SMALL ORDER PURCHASE

### **PART A: THE FOLLOWING TERMS AND CONDITIONS APPLY TO BOTH FIRM LIMIT DELIVERY AND REQUIREMENTS CONTRACTS:**

#### 1. PREPARATION OF QUOTATION.

(a) Quotes must be electronically submitted to PHLContracts by a seller with legal authority to bind the seller's Company as that authority is more fully described in the "Consent and Authorization Agreement," which Company has completed, signed and submitted to the City at the time of vendor registration or as an attachment to the first submitted Quote; in no event will the City accept a Quote from seller unless City has received a duly completed and signed Consent and Authorization Agreement by the Submission Date specified in PHLContracts ("Submission Date") for this Small Order Purchase ("SOP"). "Seller" as used herein shall refer to either the authorized individual submitting the Quote on behalf of the Company or the Company on whose behalf the Quote is submitted. No quote may be considered if received after the date and time for the opening of bids established by the Bid Solicitation and Quote, nor may any quote be modified after that date and time. The time of bid opening shall be the time displayed in PHLContracts. In the event of any discrepancy between actual time and the time displayed in PHLContracts, the latter shall determine the time of bid opening. Notwithstanding the foregoing, the Procurement Commissioner reserves the right to accept a late quote if it is the only response and it is in the best interest of the City to do so. In the event seller submits more than one quote to the same Bid Solicitation, only the last quote submitted by the time of bid opening will be considered for award.

All terms and prices quoted shall be valid for 60 days from the Submission Date, or in the case of Requirements Contracts, throughout the Contract Term specified in PHLContracts.

(b) The total amount of the Quote cannot exceed \$34,000. The City shall have no obligation to receive or pay for products or services in excess of this maximum amount, whether or not the Quote is accepted, a Contract awarded to the Seller, and/or Purchase Orders issued for items quoted. No change in prices or terms will be permitted after the Bid Opening Date.

(c) Sellers should quote on all items specified in PHLContracts for this SOP unless otherwise indicated. Unless otherwise indicated, Sellers may offer alternate products equal in quality and performance but must provide a complete description of each alternate which shall be submitted as an attachment to the Quote. If a complete and satisfactory description is not provided, the City may disqualify the Quote. The City, in its sole discretion, shall determine whether proposed alternates are equal and acceptable. If no alternate is offered, the successful seller will be required to supply the exact item as specified in PHLContracts.

(d) All products must be delivered, at the prices quoted, FOB Destination Point.

#### 2. ACCEPTANCE AND AWARD; CONTRACT TERM.

(a) The City reserves the right, in its sole discretion, to reject any and all Quotes, to accept Quotes from more than one Seller, and to accept Quotes on any one or more items quoted without accepting Quotes on all items. Quotes will be rejected or accepted within 60 days of the Submission Date.

(b) Issuance of a Purchase Order by the City shall constitute a binding contract between Seller and the City on the Effective Date in PHLContracts but only after approval by an authorized representative of the Procurement Department. The contract awarded hereunder shall consist of: the Company's duly completed and signed Consent and Authorization Agreement which Agreement is made a part of and incorporated by reference herein, the Quote as accepted by the City, all warranties, exhibits- its and attachments reviewed and accepted by the City, including information entered into PHLContracts, the Purchase Order and these Terms and Conditions of Small Order Purchase (the "Contract").

For a Firm Limit method of Quote, the total amount of the Contract shall be a fixed price and all products and services ordered shall be delivered on the specified Delivery Date; for a Requirements method of Quote, purchases and payment shall be in accordance with Part B below. The issuance of a Purchase Order shall constitute notice to Seller of the City's acceptance of the Quote and award of the Contract to Seller.

(c) The term of the Contract shall commence on the Effective Date in PHLContracts (Effective Date) and shall terminate automatically, without notice or other act of the City, as of midnight on the last day of the fiscal year that includes the Effective Date (a City fiscal year is July 1 through June 30), and the City shall have no obligation to receive or to pay for any product or service for which a Purchase Order was issued after the close of business on the last day of such fiscal year.

In no event shall the term of the Contract (1) extend beyond the last day of the fiscal year containing the Effective Date, or (2) exceed twelve (12) months.

#### 3. NONDISCRIMINATION.

(a) This Contract is entered under the terms of the Philadelphia Home Rule Charter and in its performance, Seller shall not discriminate nor permit discrimination against any person because of race, color, religion, ancestry, national origin, sex, gender identity, sexual orientation, age or disability. Such discrimination shall constitute a substantial breach of this Contract entitling the City to terminate this Contract forthwith. This right of termination is in addition to any other rights or remedies provided in this Contract or otherwise available to the City in law or in equity.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Seller agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private

organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin or ancestry, constitutes a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law or in equity. Seller agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Contract. Seller further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17- 400 of the Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided herein or otherwise available in law or in equity.

4. RESTRICTION. Sellers must not be a party to more than one Quote for the same products and/or services. Violation of this restriction may result in the rejection, at the City's sole discretion, of all Quotes submitted by Seller.

5. TAX EXEMPTION. The City is exempt from the payment of any federal excise or transportation taxes and any Pennsylvania Sales and Use Tax. All prices quoted must be net, exclusive of taxes. The seller must not include any sales taxes imposed on the seller in its costs to be reimbursed by the City.

6. INDEMNIFICATION. Seller shall indemnify, defend and hold harmless the City, its officers, employees and agents from and against any and all losses, costs, (including but not limited to litigation costs and counsel fees) claims, suits, actions, damages, liabilities and expenses (collectively, Liabilities), including but not limited to, Liabilities arising from or relating to loss of life, bodily injury, personal injury, damage to property, failure to pay subcontractors, environmental violations, any breach of this Contract, and/or any infringement or violation of proprietary rights (including but not limited to rights relating to copyright, trademark, service mark, trade secret, patents, or the use of patented appliances, products, or processes), to the extent caused by Seller's fault or negligence or the fault or negligence of Seller's agents, subcontractors, employees, or servants. Seller shall pay all royalties and charges for the use of patented appliances, products or processes. The obligations of Seller set forth in this paragraph 6 shall survive the termination of this Contract.

7. OWNERSHIP. All reports, documents, and other materials delivered to the City under this Contract shall be the sole and absolute property of the City.

8. PAYMENT. All products and services shall be furnished to the satisfaction and approval of the City.

Subject to the terms and conditions of this Contract, payment will become due following delivery and City approval of products and services ordered, and Seller's submission of invoices and supporting data as required by the City; provided, however, that the City shall have no obligation to receive or to pay for products or services for which a Purchase Order has not been issued, whether or not those products or services are delivered or performed.

Payments will only be made to the entity name as shown on the purchase order; the invoice must reflect this same entity name as the entity to "pay to". **For any payments to be made on or after July 1, 2019, the City has instituted a policy of making all of its payments through electronic deposits into the awarded entity's designated bank account.** Before any City payments are made, the awarded entity will be required to supply the City with the information necessary for the City to initiate electronic payments by completing one of the electronic payment processing enrollment forms available on the City's vendor portal at <https://secure.phila.gov/finance/vendorpayments>. Sellers awarded a contract before July 1, 2019 are encouraged to complete one of the electronic payment processing enrollment forms before the conversion to electronic payments becomes mandatory. The City intends to stop issuing paper checks.

9. TERMINATION. If Seller fails to perform any of its obligations under the Contract, including but not limited to Seller's refusal or failure to deliver products or services in accordance with the Contract, then in addition to any other remedies the City may have under the Contract, at law, or in equity, the City shall have the right to terminate the Contract for default, to purchase products or services in substitution for those not delivered, and to appropriate to the payment of the price of such substitute products or services, any monies which may become due and payable to Seller under this or any other contract Seller has with the City.

10. GOVERNING LAW. This Contract and all disputes arising under the Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any suit relating to this Contract shall be brought in the Court of Common Pleas of Philadelphia County, and Seller consents to the jurisdiction of, and venue in, such Court.

11. TAX INDEBTEDNESS.

(a) Seller, by submission of a Quote, hereby certifies and represents that Seller and Seller's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia (the "City"), and will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or

remedies available to the City at law or in equity, Seller acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to Seller and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Contract for default (in which case Seller shall be liable for all excess costs and other damages resulting from the termination).

(b) Seller shall require all subcontractors and suppliers performing work or supplying materials in connection with this Contract to be bound by the foregoing provision, and Seller shall cooperate fully with the City in exercising the rights and remedies described therein, or otherwise available at law or in equity, with respect to its subcontractors and suppliers.

12. TAX REQUIREMENTS. Any contractor, or Seller of goods, wares and merchandise, or purveyor of services, who bids on and is awarded a contract by the City of Philadelphia, is subject to Philadelphia's business tax and Ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City of Philadelphia pursuant to a Small Order Purchase has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of services within the City constitutes "doing business" in the City and subjects the successful Seller, including but not limited to, one or more of the following taxes:

- a. Business Income and Receipts Tax
- b. Net Profits Tax
- c. City Wage Tax

The successful Seller, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the Business and Earnings Tax Unit at (215) 686-6600

13. INSURANCE. a. Unless otherwise specified, the successful seller (referred to in this Section as "Contractor") shall, at its sole cost and expense, procure and maintain in full force and effect, the minimum types of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and shall be acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. The City of Philadelphia, its officers, employees, and agents are to be named as additional insureds on the General Liability policy required hereunder. Also, an endorsement is required stating that the coverage afforded these parties as additional insured will be primary to any other coverage available to them. The City's coverage as an additional insured shall be primary coverage. The insurance policy or the Contractor shall provide for at least thirty (30) days prior

written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. Under no circumstances shall Seller actually begin work without maintaining the required insurance. The City reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required hereunder at any time upon fifteen (15) days prior written notice. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Contractor to the City or to limit the Contractor's liability under this Contract to the limits of the policies of insurance required to be maintained by the Contractor hereunder.

(a) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

- i. Workers' Compensation – Statutory limits

(b) GENERAL LIABILITY INSURANCE

- i. Limit of Liability: \$500,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- ii. Coverage: Premises operation: Blanket Contractual liability; Personal Injury liability; Products and completed operations; Employees as insureds; Cross liability; Broad form property damage (including loss of use) liability; Asbestos abatement liability coverage (Note: Required for asbestos abatement projects only).

(c) AUTOMOBILE LIABILITY

- i. Limit of Liability: \$300,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- ii. Coverage: owned, non-owned and hired vehicles. Contractors providing only supplies and equipment to the City via Common Carrier are only required to maintain General Liability insurance, naming the City of Philadelphia, its officers, employees and agents as additional insureds.

14. INTEGRATION. The Contract contains all the terms, conditions and requirements agreed upon by the parties and no other contract or agreement, oral or otherwise, regarding the subject matter of the Contract shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the Contract. In the event of a conflict or inconsistency between these Terms and Conditions of Small Order Purchase and any term, condition or provision contained elsewhere in the Contract, these Terms and Conditions of Small Order Purchase shall control.

15. COMPLIANCE WITH LAWS. Seller shall comply with all applicable laws, including without limitation, ordinances, executive orders, rules and regulations of any governmental body, including the City, the Commonwealth of Pennsylvania, and the United States. Without limiting the foregoing, Seller shall comply, to the extent applicable to Seller's provision of services, with the Special Exhibit entitled, "Terms and Conditions Relating to Protected Health Information" ("City PHI Terms") posted on the City's website (at [City PHI terms Relating to Protected Health Information](#)) which is hereby

incorporated as if fully set forth herein.

himself/her- self from official action in the matter, as provided in The Philadelphia Code Section 20-608.

**PART B: FOR REQUIREMENTS CONTRACTS ONLY, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY IN ADDITION TO THE TERMS AND CONDITIONS IN PART A.:**

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**16. ETHICS REQUIREMENTS.**

To preserve the integrity of City officers and employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as they relate to City officers and employees in the solicitation of bids and execution of City contracts. Such laws are in three categories:

- A. Gifts. Executive Order No. 10-16, which prohibits any City officer or employee from accepting or receiving a gift, as defined in Executive Order No. 10-16, of any monetary value from any Person who either, (a) engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including any attorney at law while engaged in lobbying; or, (b) at the time or within twelve (12) months preceding the time a gift is received, (i) is seeking, or has sought, official action from that City employee; or (ii) has operations or activities regulated by that City employee's department, agency, office, board or commission; or (iii) has a financial or other substantial interest in acts or omissions taken by that City employee, which the City employee is able to affect through official action. Seller understands and agrees that if it offers anything of value to a City officer or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Seller may be subject to sanctions with respect to future City Contracts. Such sanctions may range from disqualification from participation in a particular Contract to debarment, depending on the nature of the violation. All City officers and employees presented with gifts or gratuities as indicated in Executive Order 10-16 have been instructed to report these actions to the appropriate authorities. All Sellers, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these incidents to the Office of the Inspector General.
- B. City Employee Interest in City Contracts. In accordance with Section 10-102 of The Philadelphia Home Rule Charter, no bid shall be accepted from, or Contract awarded to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. All Sellers are required to disclose any current City employees or officials who are employees or officials of the Seller's firm, or who otherwise would have a financial interest in the Contract.
- C. Conflict of Interest. Both the State Ethics Act and the City Ethics Code prohibit a public employee from using his/her public office or any confidential information gained thereby to obtain financial gain for himself/herself a member of his/her immediate family, or a business with which he/she or a member of his/her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying

- 1. Contract Term. The City can, at its sole discretion, order products or services as specified in PHLContracts at any time during the contract term so specified by the City ("Contract Term"). Sellers are required to deliver and the City shall pay for, accepted and approved products and services for which a Purchase Order was issued or services were requested prior to the close of business on the last day of the Contract Term. Subject to any delivery terms in the quote in PHLContracts, products or services may be delivered after such time; however, the City shall have no obligation to receive or pay for any product or service for which a Purchase Order was issued after the close of business on the last day of the Contract Term, or for which no Purchase Order was issued. In no event shall Sellers deliver products or perform services unless or until (1) a Purchase Order is issued for the products or services, and (2) the City requests delivery or Performance.
- 2. Maximum Order Value. Purchase Orders issued pursuant to this Contract may not exceed, individually or in the aggregate, a total value of \$34,000. This Contract and any Purchase Order(s) issued pursuant to the Contract shall expire and become null and void (1) when the total value thereof exceeds \$34,000, and/or (2) upon the expiration of the fiscal year that includes the Effective Date of the Contract (a City fiscal year is from July 1 through June 30). The City shall have no obligation to receive or pay for products or services in excess of this maximum amount, or that are ordered after the expiration of the term of the Contract. Sellers are responsible for monitoring Purchase Orders and for ensuring that they do not deliver to the City products and services in excess of the maximum \$34,000 value (or such lesser value as may be specified in PHLContracts), or products and services ordered after expiration of the term of the Contract.
- 3. Quantities Awarded/Ordered. The Quantities specified in PHLContracts are the City's best estimate of the quantity of each product and/or service that the City expects to order during the Contract Term. Services may only be rendered upon the City's request. However, at the City's sole option, such quantities may be increased or decreased, or the City may order no products or services at all, depending upon the City's requirements (as determined solely by the City) during the Contract Term.
- 4. Prices. All prices and units quoted shall remain in effect throughout the Contract Term, unless agreed otherwise by the City through approval in PHLContracts by an authorized Procurement Department representative.