

INSTRUCTIONS FOR USE EQUIPMENT-SERVICES BID PACKAGE (NON-PUBLIC WORKS)

This bid package template is intended for use in procuring equipment or non-construction services outside the public works setting. The template includes the following documents:

- Notice to Bidders
- Purchase Contract
- Instructions to Bidders
- Bid Form

The template is not suitable for public works construction services, nor is it appropriate for architectural, engineering, or construction management services. The bid threshold for equipment, materials, or supplies, and services other than construction services for both school and community college districts, is adjusted annually for inflation and, as of January 2014, is \$84,100. Exceptions or deviations from the competitive bidding requirements may exist for particular services and/or products.

This template may not be suitable for all procurements. You may need to include additional documents, such as bonds, Substitution Listing, Workers' Compensation Certificate, Guarantee, etc., which may be found in the Public Works Bid Package posted on the Schools Legal Service website, Business & Construction page (<http://www.schoolslegalservice.org/clients/business>).

You should include a set of specifications describing in detail the attributes of the products being procured or the services to be performed. Any relevant milestones or deadlines should be included.

This template is posted in Microsoft Word format. If you have any questions concerning the suitability of this template for your particular procurement, it is recommended that you consult legal counsel. The following are some specific instructions for the forms included:

NOTICE TO BIDDERS

Introductory Paragraph. Fill in the name of the district and a brief description of the product or services. Example: ". . . hereby solicits bids for the following products and/or services: laptop computers, as more fully described in the specifications on file with the District." Also fill in the date and time bids are due and the specific location where bids must be delivered.

If you are procuring electronic data processing systems and supporting software, add the additional paragraph indicated, as applicable.

The Notice to Bidders should be published in a newspaper of general circulation as required by law. (See Public Contract Code Section 20112 [81641 for community college districts] and Government Code Section 53068.)

INSTRUCTIONS TO BIDDERS

Fill in the project title or bid number and the name of the Owner at the top of the form. Check one option in Section 13.

PURCHASE CONTRACT

The Purchase Contract should be included as a blank form in the bid package. Once the contract is awarded, the names of the parties should be provided in the introductory paragraph, the contract price should be inserted in Section 2, the equipment or services purchased should be specified in Attachment A. Additional blanks need to be completed in Sections 4, 5, 6, 7, and 14. Additional insurance requirements should be added in Section 7. Note the optional paragraphs in Section 26 which must be initialed by both parties if you wish to include them.

Contracts should be approved or ratified by the district governing board, consistent with any board policy permitting delegation of the authority to contract to district officials as permitted by law.

NOTICE TO BIDDERS

The _____ District ("District") hereby solicits bids for the following products and/or services: _____, as more fully described in the specifications on file with the District. Bids are due on _____ at _____ **[time]** or at any other date or time as set by Addendum. Bids must be received by that date and time at the following location, by personal delivery, courier, or mailed by United States Postal Service:

[K-12 districts add the following if procuring electronic data processing systems and supporting software]: In accordance with Public Contract Code Section 20118.1, the District reserves the right to contract with any one of the three lowest responsible bidders meeting the District's specifications for the procurement and/or maintenance of electronic data processing systems and supporting software, or else reject all bids.

[Community college districts add the following if procuring electronic data processing systems and equipment, electronic telecommunication equipment, supporting software and related materials, goods, and services]: In accordance with Education Code Section 81645, the District reserves the right to contract with any one of the three lowest responsible bidders meeting the District's specifications for the acquisition, procurement, or maintenance of electronic data processing systems and equipment, electronic telecommunication equipment, supporting software and related materials, goods, and services, or else reject all bids, in accordance with procedures and criteria established by the governing board.

INSTRUCTIONS TO BIDDERS

(NON-PUBLIC WORKS)

**WARNING: READ THIS DOCUMENT CAREFULLY
DO NOT ASSUME THAT IT IS THE SAME AS OTHER
SIMILAR DOCUMENTS YOU MAY HAVE SEEN
EVEN IF FROM THE SAME OWNER**

PROJECT TITLE/BID # _____
OWNER: _____

1. Preparation of Bid Form.

The Owner invites bids on the form attached to be submitted at the time and place stated in the Notice to Bidders. Bids shall be submitted on the prescribed Bid Form, completed in full. All bid items and statements shall be properly and legibly filled out. Numbers shall be stated both in words and in figures where so indicated, and where there is a conflict in the words and the figures, the words shall govern. The signatures of all persons shall be in longhand. Prices, wording, and notations must be in ink or typewritten.

2. Form and Delivery of Bids.

The bid must conform to and be responsive to all Contract Documents and shall be made on the Bid Form provided. The complete bid, together with any additional materials required, shall be enclosed in a sealed envelope, addressed and hand-delivered or mailed to the Owner at the address set forth in the Notice to Bidders, and must be received on or before the time set for the opening of bids. The envelope shall be plainly marked in the upper left-hand corner with the bidder's name, the project designation, and the date and time for the opening of bids. It is the bidder's sole responsibility to ensure that its bid is received prior to the bid deadline. In accordance with Government Code Section 53068, any bid received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

At the time set for the opening of bids, the sealed bids will be opened and publicly read aloud at the place indicated in the Notice to Bidders. However, if this project calls for prequalification of bidders pursuant to Public Contract Code Section 20111.5, only those sealed bids received from bidders who have been prequalified for at least one day prior to bid opening shall be opened and publicly read aloud.

3. Bid Security.

Each bid shall be accompanied by a bid security in cash, a certified or cashier's check, or bid bond in an amount not less than 10 percent of the total bid price payable to the Owner. The bid security shall be given as a guarantee that if awarded the contract the bidder will execute and return the Purchase Contract within 10 working days after award of the contract, and certificates evidencing that the required insurance is in effect in the amounts set forth in the Contract Documents. In case of refusal or failure to timely execute the Purchase Contract and furnish the required bonds and insurance certificates, the bid security shall be forfeited to the Owner. If the bidder elects to furnish a bid bond as its bid security, the bidder shall use the bid bond form included in the Contract Documents, unless the Owner elects to waive the use of the form provided, in its sole discretion.

4. Signature.

At the various times such documents are required to be submitted, the Bid Form, all required bonds, all Information Required of Bidder or prequalification forms, Workers' Compensation Certificate, Drug-Free Workplace Certification, the Purchase Contract, and all Guarantees must be signed in the name of the bidder and must bear the signature of the person or persons duly authorized to sign these documents. Where indicated, if bidder is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from among the chairman of the board, president, or vice president, and one from among the secretary, chief financial officer, or assistant treasurer. Alternatively, the signature of other authorized officers or agents may be affixed, if duly authorized by the corporation. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal. Where indicated, if bidder is a joint venture or partnership, the bidder shall submit with the bid certifications signed by authorized officers of each of the parties to the joint venture or partnership, naming the individual who (1) shall be the agent of the joint venture or partnership, (2) shall sign all necessary documents for the joint venture or partnership and, (3) should the joint venture or partnership be the successful bidder, shall act in all matters relative to the resulting contract for the joint venture or partnership. If bidder is an individual, his/her signature shall be placed on such documents.

5. Modifications.

Changes in or additions to any of the bid documents, the summary of the work bid upon, or the alternative proposals, or any other modifications which are not specifically called for by the Owner, may result in the Owner's rejection of the bid as not being responsive. No oral or telephonic modification of any bid will be considered. However, prior to the opening of bids, a telegraphic modification signed by the bidder and postmarked and received prior to the opening of bids, or a facsimile modification duly signed by the bidder received prior to the opening of bids, may be considered if included within a sealed bid.

6. Erasures, Inconsistent, or Illegible Bids.

The bid submitted must not contain any erasures, interlineations, or other corrections unless each correction creates no inconsistency and is suitably authenticated and noted by signature of the bidder. In the event of inconsistency between words and figures in the bid, the words shall govern. In the event the Owner determines that any bid is unintelligible, illegible, or ambiguous, the Owner may reject the bid as not being responsive.

7. Examination of Site and Contract Documents.

At its own expense and prior to submitting bids, each bidder shall examine all documents relating to the project, visit the site, if applicable, and determine the local conditions which may in any way affect the performance of the work, including the general prevailing rate of per diem wages and other relevant cost factors. Each bidder shall be familiar with all federal, state, and local laws, ordinances, rules, regulations, and codes affecting the performance of the work, including the cost of permits and licenses required for the work. Each bidder shall make such surveys and investigations, including investigation of subsurface or latent physical conditions at the site or where work is to be performed, as it may deem necessary for performance of the work at the price being bid. Each bidder shall determine the character, quality, and quantities of the work to be performed and the materials and equipment to be provided, and shall correlate its observations, investigations, and determinations with all requirements of the project.

The Contract Documents show and describe the existing conditions as they are believed to have been used in the design of the work and are only provided as information for the bidder. **The Owner is not making any warranties regarding this information. The Owner shall not be liable for any loss sustained by the successful bidder resulting from any variance between the conditions and design data given in the Contract Documents and the actual conditions revealed during the bidder's pre-bid examination or during the progress of the work.** Bidder agrees that the submission of a bid shall be incontrovertible evidence that the bidder has complied with and agrees to further comply with all the requirements of this section.

8. Withdrawal of Bids.

Any bid may be withdrawn, either personally, by written request, or by telegraphic or facsimile request confirmed in the manner specified above for bid modifications, at any time prior to the scheduled closing time for receipt of bids. In accordance with this paragraph, the bid security shall be returned for bids withdrawn prior to the scheduled closing time for receipt of bids. No bidder may withdraw any bid for a period of 60 days after the award of the contract.

9. Agreement and Bonds.

The Purchase Contract and, if applicable, the form of bonds which the successful bidder as Contractor will be required to execute are included in the Contract Documents and should be carefully examined by the bidder. Sufficient bonds shall be fully executed and returned to Owner with the executed Purchase Contract.

10. Interpretation of Contract Documents.

If any bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in or omissions from the drawings and specifications, a written request for an interpretation or correction shall be submitted to the Owner. The bidder submitting the written request shall be responsible for its prompt delivery. Any interpretation or correction of the Contract Documents will be made only by addendum issued by the Owner, and a copy of any addendum will be hand-delivered, mailed, or faxed to each bidder known to have received a set of the Contract Documents. No person is authorized to make any oral interpretation of any provision in the Contract Documents, nor shall any oral interpretation be binding on the Owner. If there are discrepancies on drawings, plans, or specifications, or conflicts between drawings, plans, specifications, terms, or conditions, the interpretation of the Owner shall prevail. Bidder shall become familiar with the plans, specifications, and drawings.

SUBMISSION OF A BID WITHOUT REQUESTING CLARIFICATIONS SHALL BE INCONTROVERTIBLE EVIDENCE THAT THE BIDDER HAS DETERMINED THAT THE PLANS, SPECIFICATIONS, AND DRAWINGS ARE SUFFICIENT FOR BIDDING AND COMPLETING THE WORK, THAT BIDDER IS CAPABLE OF READING, FOLLOWING AND COMPLETING THE WORK IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND DRAWINGS, AND THAT THE PLANS, SPECIFICATIONS, AND DRAWINGS FALL WITHIN AN ACCEPTABLE STANDARD FOR THESE ITEMS, AND THAT BIDDER AGREES THAT THE PROJECT CAN AND WILL BE COMPLETED ACCORDING TO THE OWNER'S TIMELINES AND ACCORDING TO THE PROGRESS SCHEDULE TO BE SUBMITTED BY THE SUCCESSFUL BIDDER INCORPORATING THE OWNER'S TIMELINES FOR DELIVERY OR COMPLETION OF THE PROJECT.

11. Bidders Interested in More Than One Bid.

No person, firm, or corporation shall be allowed to make or file or be interested in more than one bid for the same work unless alternate bids are specifically called for by the Owner. A person, firm, or corporation that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not disqualified from submitting a proposal or quoting prices to other bidders or submitting a bid on the project.

12. Award of Contract.

(a) The Owner reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding process, and to award more than one contract. If two identical low bids are received from responsive and responsible bidders, the Owner will determine which bid will be accepted pursuant to Public Contract Code Section 20117.

(b) If made by the Owner, award of the contract will be by action of the governing board or other governing body to the lowest responsive and responsible bidder. In the event an award of the contract is made to a bidder and that bidder fails or refuses to execute the Purchase Contract and provide the required documents within the time required, the Owner may award the contract to the next lowest responsive and responsible bidder or release all bidders. An election by the Owner to reject all bids does not release the bid security of any bidder who has previously been awarded the contract and failed or refused to execute the Purchase Contract and provide the required documents.

(c) In ascertaining the low bidder, the bids will be examined without reference to any substitutions requested by any bidder, whether or not the substitution request would result in a modification of the contract price.

13. Public Contract Code Section 20111.5—Prequalification of Bidders.

[check one]

_____ Prequalification is not required to bid on this project. Bidders must complete and submit with their bids the Contractor's Qualifications Questionnaire that is included in the bid documents provided by Owner.

_____ Prequalification is required to bid on this project. Prospective bidders are required to submit to the Owner a completed prequalification questionnaire and financial statement, on forms provided by the Owner, no later than five days prior to the date fixed for the public opening of sealed bids. These documents will be the basis for determining which bidders are qualified to bid the project. Bidders will be notified by telephone and mail of their prequalification status within four days after submission of prequalification documents. Bids will not be accepted from any bidder who has not been prequalified at least one day prior to the bid opening. Pursuant to Public Contract Code Section 20111.5, the information in the prequalification questionnaire and financial statement will be kept confidential. Prequalification documents may be obtained by contacting the Owner.

14. Competency of Bidders.

In selecting the lowest responsive and responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for performance of the work. By submitting a bid, each bidder agrees that in determining the successful bidder and its eligibility

for the award, the Owner may consider the bidder's experience, facilities, conduct, and performance under other contracts, financial condition, reputation in the industry, and other factors relating to or which could affect the bidder's performance of the project. To this end, where bidders are not required to prequalify, the owner may require that each bid be supported by a statement of the bidder's experience.

The Owner may also consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work. Operating costs, maintenance considerations, performance data, and guarantees of materials and equipment may also be considered by the Owner. In this regard, the Owner may conduct such investigations as the Owner deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications, and financial ability of the bidder, proposed subcontractors, and other persons and organizations to do the work to the Owner's satisfaction within the prescribed time. The Owner reserves the right to reject the bid of any bidder who does not pass any such evaluation to the satisfaction of the Owner or, in the Owner's sole discretion, to permit substitution of subcontractor(s) found non-responsible.

15. Workers' Compensation.

In accordance with the provisions of Labor Code Section 3700, the successful bidder shall secure the payment of compensation to all employees. The successful bidder awarded the contract shall sign and file with the Owner, at the time of returning the executed Purchase Contract, the Workers' Compensation Certificate which is included as a part of the Contract Documents.

16. Anti-Discrimination.

It is the policy of the Owner that in all work performed under contracts there be no unlawful discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, marital status, physical disability, mental disability, or medical condition. The successful bidder agrees to comply with applicable federal and state laws, including but not limited to the California Fair Employment and Housing Act, beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the successful bidder agrees to require like compliance by any subcontractors employed on the work by that bidder.

17. Hold Harmless.

The successful bidder awarded the contract shall hold harmless and indemnify various parties as more clearly set forth elsewhere in the Contract Documents.

18. Substitutions.

(a) All bids should be calculated and submitted on the project as described in the bid documents, and on the assumption that substitution requests submitted with the bid will not be approved. Notwithstanding the foregoing, substitution requests submitted with bids will be given due consideration and adjustments to the contract, which may include adjustment to contract price, will be contained in a change order should the request be approved. Bidders not desiring to bid without prior approval of a proposed substitution should follow the procedure contained in this section for pre-bid review of proposed substitutions.

- (b) Should the bidder wish to request prior to bid opening any substitution for the specified materials, process, service, or equipment, the bidder shall submit a written request at least 10 working days before the bid opening date and time. If the requested substitution is acceptable, the Owner will approve it in an addendum issued to all bidders of record. Requests received less than 10 working days prior to bid opening will not be considered prior to the bid date. Extensions of the bid date shall not operate to extend the deadline for requesting substitutions unless the Owner so states in an addendum issued to all bidders of record.
- (c) If a substitution is not requested and considered prior to the bid date, the bidder shall submit with the bid all proposed substitutions, if any, on the Substitution Listing form contained in the bid documents.
- (d) With respect to any materials, process, service, or equipment listed in the bid, unless the bidder clearly indicates in its Substitution Listing that it is proposing to use an "equal" material, process, service, or equipment, its bid shall be considered as offering the specified material, process, service, or equipment referred to by the brand name or trade name specified.
- (e) Unless expressly authorized in the bid documents, no bid may be conditioned on the Owner's acceptance of a proposed substitution. Any bid containing any such condition may be treated as a non-responsive bid.
- (f) It is expressly understood and agreed that the Owner reserves the right to reject any proposed substitution. It is further expressly understood and agreed that in the event the Owner rejects a proposed "equal" item, or any other requested substitution, the specified material, process, service, or equipment designated by brand name or trade name, or other item as specified, will be provided.
- (g) No substitution request of any kind or nature may be made after the bid date, except by the express written permission of the Owner and on such terms as the Owner may require, or in an emergency, as in the case where a specified material, process, service, equipment, or other item has become unavailable through no fault of the bidder.
- (h) These time limitations shall be complied with strictly, and in no case will an extension of time for completion be granted because of the failure to request the substitution of an item at the times and in the manner set forth herein.
- (i) Prior to contract award, the Owner shall notify the bidder of the Owner's decision concerning proposed substitutions of "equal" items submitted with the bid. The Owner shall notify bidder of the Owner's decision on any other proposed substitutions as those decisions are made. Notification of all decisions by the Owner shall be in writing, and no proposed substitution shall be deemed approved unless the Owner has confirmed it in writing.
- (j) With respect to all proposed substitutions, the requirements applicable to the Contractor in the Contract Documents shall be applicable to all bidders requesting substitutions.

19. Surety Qualifications.

Bid bonds executed by a surety insurer admitted in the State of California for purposes of issuance of such bonds will be accepted by Owner as sufficient.

Other bonds required under the Purchase Contract executed by a surety insurer admitted in the State of California with a minimum "A minus, VIII" rating ("A minus, V" when the price stated in the Contract Documents is less than \$500,000) as rated by the current edition of Best's Key Rating Guide published by A.M. Best Company, Oldwick, New Jersey 08858, shall be presumed by Owner to be sufficient for the issuance of such bonds. In the alternative, any admitted surety company which satisfies the requirements set forth in Code of Civil Procedure Section 995.660 shall be accepted and approved for the issuance of bonds, and documents demonstrating satisfaction of the requirements of Section 995.660 with respect to the bid bond must be submitted with the bid. No personal sureties will be accepted.

20. Liquidated Damages.

All work must be completed within the time limits set forth in the Contract Documents. Bidders must understand that the goodwill, educational process, and other business of the Owner will be damaged if the project is not completed within the time limits required. Should the work not be completed within the specified time for completion, the successful bidder awarded the contract may be liable for liquidated damages and for expenses incurred by the Owner for failure to timely complete the project. Such damages shall be deducted from any payments due or to become due to the successful bidder.

SUBMISSION OF A BID ON THIS PROJECT SHALL BE TAKEN AS CONCLUSIVE AND IRREFUTABLE EVIDENCE THAT BIDDER AGREES WITH THE REQUIREMENTS OF THIS SECTION.

21. Fingerprinting Requirements.

The successful bidder and all subcontractors at any level will be required to comply with any applicable laws on fingerprinting construction workers. Minimum requirements are set forth in the Contract Documents, and the form for certification of compliance is contained in the Contract Documents. The successful bidder must complete and return this form when directed by Owner.

22. California Products.

Price, fitness, and quality being equal with regard to supplies, the Owner may prefer supplies grown, manufactured, or produced in California. The Owner may next prefer supplies partially grown, manufactured, or produced in California. Where the Owner has a preference, the bids of the suppliers or the prices quoted by them (i) must not exceed by more than five percent the lowest bids/prices quoted by out-of-state suppliers, (ii) the major portion of the manufacture of the supplies is not done outside of California, and (iii) the public good will be served. Refer to specifications for indications of Owner preferences. Government Code Sections 4330-4334.

23. Post-Bid Credits.

Should any bidder or proposed subcontractor to any bidder issue any credit or otherwise reduce its bid or quote pertaining to the work of this project, the value of the credit or other reduction shall be passed on to the Owner less only the applicable markups for profit and overhead as specified in the Contract Documents on change orders.

24. Contents of Bid.

The bid will include the following documents and any other documents specified by Owner: Bid Form, List of Subcontractors, Substitution Listing, Non-collusion Affidavit, Contractors' Qualifications Questionnaire (not required if a prequalification process is specified), Bid Bond, or other bid security.

25. Bid Protests.

Any bidder having submitted a bid on the project may file a protest against the proposed contract award or challenging the validity of other bids. The protest must meet all of the following requirements:

- (a) The protest shall be submitted in writing and shall contain all the materials required by these provisions; one that does not contain all the required material shall not be recognized.
- (b) The protest shall be received by the Owner no later than close of business on the second business day after bid opening; one received after that time shall not be recognized.
- (c) Each protest shall contain the following:
 - (i) Identification by name, address, and telephone number of the protesting person(s), company, and/or organization and identification of the project to which the protest pertains.
 - (ii) The protest shall set forth in detail all grounds for the protest, including without limitation all facts, identification by name of any other bids or bidders involved in the protest, all supporting documentation, together with any legal authorities and/or argument in support of the grounds for the protest. Any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible, and credible evidence.
- (d) Any protest not conforming to the requirements of this section shall be rejected as invalid.
- (e) Where a protest is filed in conformity with this section, the Owner's staff or such individual(s) as may be designated by the Owner, shall review and evaluate the basis of the protest and provide a written decision to the protesting bidder. The written decision shall either concur with or deny the protest.
- (f) Submission of a written protest to and receipt of a written decision from the Owner's staff shall be considered an administrative remedy, and failure to follow this procedure shall be a bar to any legal action.
- (g) The written decision by the Owner's staff may be appealed to the Owner. The appeal must be filed with the Owner's governing board or other governing body within two business days of the protesting bidder's receipt of the written decision of the Owner's staff.
- (h) The appeal must clearly state the reasons and basis for appealing the decision of the Owner's staff, making specific reference to any portions of the material submitted with the protest required.

- (i) A hearing on the appeal shall be held before the Owner's governing board or other governing body within 45 days or less of receipt of the appeal.
- (j) The Owner's governing board or other governing body will make a decision within seven days following the hearing. The decision of the Owner's governing board or other governing body is not subject to arbitration, mediation, reconsideration, or further appeal.
- (k) Submission of an appeal to and receipt of a decision from the Owner's governing board or other governing body shall be considered an administrative remedy, and failure to follow this procedure shall be a bar to any legal action.

26. Procedure for Protesting Being Deemed A Non-Responsible Bidder.

Any bidder or prospective bidder deemed non-responsible after having submitted a bid may file an appeal of the action to the Owner's governing board or other governing body. The protest must meet all of the following requirements:

- (a) The appeal shall be submitted in writing, and shall contain all the materials required by these provisions; one that does not contain all the required materials shall not be recognized.
- (b) The appeal must be received by the Owner's governing board or other governing body within two business days of the action giving rise to the protest; one received after that time shall not be recognized.
- (c) A hearing on the appeal shall be held before the Owner's governing board or other governing body prior to the award of contract.
- (d) The decision of the Owner's governing board or other governing body is not subject to arbitration, mediation, reconsideration, or further appeal.
- (e) Submission of a protest to and receipt of a decision from the Owner's governing board or other governing body shall be considered an administrative remedy and failure to follow this procedure shall be a bar to any legal action.

PURCHASE CONTRACT
(Non-Public Works)

THIS PURCHASE CONTRACT is between the _____ District ("District") and _____ ("Vendor").

District and Vendor agree as follows:

1. Purchase. Vendor sells to District, and District purchases from Vendor, the equipment, materials, and/or supplies identified on Attachment A. In addition, Vendor shall do everything required to provide and furnish all labor, materials, tools, equipment, and all utility and transportation services required, to deliver, install, and/or assemble the items procured as required in this Purchase Contract and any specifications and other requirements issued by District in connection with this purchase. The purchase of equipment, materials, and/or supplies under this Purchase Contract, along with any associated services, shall be referred to collectively as the "Purchase."

All equipment, material, and/or supplies to be furnished, and all work to be performed, shall be in conformity with any plans, drawings, specifications, bonds, insurance policies, conditions, and modifications of any of those which, by this reference, are made a part of this Purchase Contract.

2. Contract Documents. The complete contract includes all documents comprising the bid package (including but not limited to any Instructions to Bidders, Bid Form, Substitution Listing, Workers' Compensation Certificate, Guarantee) and all modifications, addenda, and amendments of or to any of these documents, all of which are incorporated by reference into this contract.

3. Contract Price. Subject to the terms and conditions of this contract, District shall pay to Vendor for all items furnished and work to be performed under this contract the total sum of \$ _____.

4. Payments.

A. Payment of the contract price shall be made when the product or service has been satisfactorily delivered to District and an invoice for completed services/delivery has been presented. In addition, the following terms of payment apply: _____

B. From the payments specified in Paragraph A, District may make any deductions authorized or required by law or this contract including, by way of example only, the following:

- (1) Liquidated and other damages described in this contract;
- (2) Defective equipment, materials, supplies, or work not remedied;
- (3) Failure of Vendor to make proper payments to its subcontractor(s) or material men for materials or labor;
- (4) Damage to another Vendor.
- (5) Other damages sustained by District.

5. Time for Performance. Vendor shall commence work on the Purchase on the date directed by District and shall complete the Purchase within ____ calendar days thereafter. Other delivery and/or timing issues are as follows:_____:

6. Submission of Bonds and Insurance Certificates. Vendor shall not commence any work on the Purchase until Vendor has submitted to District all insurance certificates and bonds required by this Contract. All bonds and certificates shall be submitted to District within ____ days following issuance of this contract by District.

7. Liquidated Damages. For each calendar day completion is delayed beyond the time allowed in this contract for delivery of equipment, materials, or supplies, or rendering of services, Vendor shall forfeit and pay to District the sum of \$_____, which shall be deducted from any payments due to or to become due to Vendor.

In addition to any liquidated damages which may be assessed, if Vendor fails to complete the Purchase within the time period provided in the contract documents, and if as a result District finds it necessary to incur any costs and expenses (for example, relating to the acquisition and use of facilities pending completion of the Purchase, or damages to another vendor), Vendor shall pay all those costs and expenses incurred by District. These costs and expenses may include but are not limited to such items as rental payments, inspection fees, and additional consultant fees related to the Purchase. These costs and expenses may be retained by District from any payments otherwise due to Vendor.

8. Insurance. Vendor shall obtain insurance acceptable to District with a company or companies licensed to do business in the State of California and acceptable to District. Vendor shall maintain, at his own cost and expense during the term of this contract, the following insurance:

A. Workers' Compensation Insurance for all of Vendor's employees in amounts not less than that required by law. Pursuant to Labor Code Sections 3700 and 1860 and following, Vendor shall submit to District an acceptable Workers' Compensation Certificate.

B. Public liability and property damage insurance with per occurrence limits not less than \$_____ for death or personal injury and \$_____ for property damage. The policy(ies) shall contain an endorsement naming District as an additional insured insofar as this Purchase Contract is concerned, and provide that notice shall be given to District at least 30 days prior to cancellation or material change in the form of such policy(ies). Vendor shall furnish District with certificates of insurance containing the endorsements required under this section, and District shall have the right to inspect the original policy(ies) of such insurance upon request.

C. ***[Additional Insurance Requirements, e.g., professional liability.]***

9. Performance/Payment Bonds. Payment and performance bonds are not required on this Purchase, unless required in supplementary conditions.

10. Extra Work. Vendor and District agree that changes in this Contract or in the Purchase to be made under this Contract shall become effective only when written in the form of a supplemental condition or Change Order and approved and signed by District and Vendor. Should District direct or request additional purchases or work not otherwise included within Paragraph 1 of this Contract, the cost of the additional purchases or work shall be added to the Contract Price and paid by District pursuant to this Contract. The term "cost" as used in this paragraph means the actual cost

to the Vendor of the labor, equipment, materials, supplies, or subcontracts required for the additional purchase or work, increased by ten percent for Vendor overhead and profit, including increased bond costs, if applicable.

11. Indemnification. Vendor shall indemnify and hold the District, its officers, agents, and employees free and harmless from any and all claims, losses, damages, liabilities, and expenses, including attorney's fees and costs, arising from the death or injury of any person or persons, or from the damage or destruction of any property, caused by or connected with the performance of this Contract by Vendor, his agents, subcontractors, or employees.

12. Termination of Contract. Should Vendor commit any of the acts specified in this paragraph, District may, by giving seven days written notice to Vendor, without prejudice to any other rights or remedies afforded District by law or by this Contract, terminate the services of Vendor under this contract; take possession of the Purchase and the premises on which it is located; take possession of all materials, tools, and appliances located on the premises; and complete the Purchase by whatever method District may deem expedient. Vendor shall be deemed to have committed an act specified in this paragraph if Vendor:

- A. Is adjudged a bankrupt;
- B. Makes a general assignment for the benefit of creditors;
- C. Refuses or fails to supply enough properly skilled workers or proper materials to complete the Purchase in the time specified in this Contract;
- D. Fails to make prompt payment to subcontractors, workers, or material men for labor performed on or materials furnished to the Purchase;
- E. Persistently disregards any laws or ordinances relating to the Purchase or its completion; or
- F. Otherwise commits a substantial violation of any provision of this Contract.

13. Extension of Time. Liquidated damages shall not be imposed because of any delays in completion of the Purchase due to (1) unforeseeable causes beyond the control and without the fault or negligence of Vendor and (2) performing any extra purchase or work pursuant to this Contract.

14. Clean-up. Vendor shall, on completion of the Purchase, remove all debris and surplus materials from the Purchase site.

15. Notices. Any and all notices or other matters required or permitted by this Contract or by law to be served on, given to, or delivered to either District or Vendor by the other party to this Contract shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or to a supervisory employee of that party, or in lieu of personal service, when deposited in the United States mail, first class postage paid, addressed to District at _____, California, or to Vendor at _____, California. Either party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this paragraph.

16. Guarantee. Vendor guarantees all Purchase work for a period of one year after acceptance of the work by District and shall repair or replace any or all work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials. This shall be in addition to any equipment or materials warranties as specified and/or required elsewhere.

17. Labor Code. Vendor shall comply with all applicable provisions of the California Labor Code in providing products or services under this Purchase Contract.

18. Laws and Regulations. Vendor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the work required by this Contract.

19. Substitutions. No substitutions are permitted under this Contract.

20. Utilities. Unless otherwise agreed by the parties in writing, all utilities including but not limited to electricity, water, gas, and telephone used in connection with the Purchase shall be furnished and paid for by Vendor.

21. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted and this Contract shall be read and enforced as though it were included. If through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

22. Ownership of Drawings. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other Purchase documents and copies thereof furnished by District are District's property. They are not to be used in other work and are to be returned to District on request at completion of work.

23. Entire Agreement. This document, including any conditions, exhibits, schedules, plans, or specifications to which it refers, constitutes the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the Purchase which is the subject of the agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Contract.

24. Status of Parties. The parties agree that in performing the services specified in this Agreement, Contractor shall act as an independent contractor. Except as specified in this Contract, Contractor shall determine the means and methods for carrying out the work to achieve the result required by Owner. Contractor shall be free to contract for similar services to be performed while under contract with Owner, provided that Contractor will not accept such engagements which interfere with performance under this Contract. Contractor is not entitled to participate in any pension plan, insurance, bonus, or similar benefit Owner provides for its employees.

Any employees or assistants retained by Contractor shall be the responsibility of Contractor and not of Owner. Contractor shall determine the hours during which the services shall be performed and the sequence of tasks, subject to the reasonable business needs of Owner.

25. Miscellaneous.

A. Waiver. Any of the terms or conditions of this Contract may be waived at any time by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or

satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Contract.

B. Assignment. Neither party may assign any rights or benefits or delegate any duties under this Contract without the written consent of the other party. Any purported assignment without written consent shall be void.

C. Parties in Interest. Nothing in this Contract, whether express or implied, is intended to confer any rights or remedies under or by reason of this Contract on any person other than the parties to it and their respective successors and assigns, nor is anything in this Contract intended to relieve or discharge the obligation or liability of any third person to any party to this Contract, nor shall any provision give any third person any right of subrogation or action against any party to this Contract.

D. Severability. If any provision of this Contract is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall continue in full force and effect and shall in no way be impaired or invalidated.

E. Governing Law. The rights and obligations of the parties and the interpretation and performance of this Contract shall be governed by the laws of California, excluding any statute which directs application of the laws of another jurisdiction.

F. Authority to Enter Into Agreement. Each party to this Contract represents and warrants that it has the full power and authority to enter into this Contract, to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery, and performance of the Contract.

G. Conflict of Interest. The parties to this Contract have read and are aware of the provisions of Section 1090 and following and Section 87100 and following of the Government Code relating to conflict of interest of public officers and employees. Contractor represents that it is aware of no financial or economic interest of any officer or employee of Owner relating to this Contract. It is further understood that if such a financial interest does exist at the inception of this Contract, Owner may immediately terminate this Contract by giving written notice to Contractor. Contractor shall comply with the terms of Government Code Section 87100 and following during the term of this Contract.

H. Nondiscrimination. Neither Contractor nor any officer, agent, employee, or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on any ground prohibited by law, nor shall any of them harass any person in the course of performing this Contract based on gender or any other basis prohibited by applicable law.

I. Licenses and Permits. Contractor represents that Contractor, and Contractor's employees who will render services under this Contract, are fully qualified and competent to provide the services called for under the Contract. Contractor shall secure and maintain in force any permits or licenses required to perform the services called for under this Contract, at Contractor's expense unless specified otherwise in the Contract.

ADDITIONAL OPTIONAL PROVISIONS (BOTH PARTIES INITIAL IF APPLICABLE)

Confidentiality. Contractor shall at all times protect the confidentiality of all matters to which Contractor has access under this Contract, including but not limited to any records pertaining to pupils or employees. Contractor shall not disclose or discuss the facts of any such matter with any person other than Owner’s authorized representatives without prior written consent of Owner, a court order, judicial subpoena, or other valid legal process. Contractor shall notify Owner immediately by telephone and fax of any subpoena or court order seeking information covered by this Contract.

Contractor’s Records. Contractor agrees to maintain and make available to Owner accurate books and records relative to all activities under this Contract. Contractor shall permit Owner to audit, examine, and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, personnel records, or other data related to all other matters covered by this Contract. Consultant shall maintain such data and records in an accessible location and condition for a period not less than years from the date of final payment under this Contract.

Pupil Safety Requirements. Contractor certifies that neither Contractor nor any of its employees or subcontractors who may come in contact with pupils has been convicted of a felony as defined in Education Code Section 45122.1. Contractor shall contract with the Department of Justice for “subsequent arrest service” and shall immediately inform Owner, and remove from Owner’s or other premises where pupils may be present, any employee or subcontractor whom Contractor discovers has been subsequently charged with a felony defined in Education Code Section 45122.1, pending resolution of the criminal charge. Contractor shall indemnify, hold harmless, and defend Owner from any and all damages, claims, lawsuits, penalties, or causes of action arising out of Contractor’s failure to comply with this section or arising out of Contractor’s removal of any employee based on a subsequent arrest.

Pupil Safety Requirements. Owner has determined that Contractor’s activities will involve limited or no contact with Superintendent’s pupils. However, in order to help assure the safety of pupils, Contractor’s employees shall check in at the site office upon arrival and departure to notify Owner’s personnel of their presence. Contractor’s employees shall not travel to areas of the campus where pupils are present other than the site office without the consent of Owner or Owner’s designee.

Executed at _____, _____ County, California.

DATED: _____

OWNER
By: _____
Title _____
Address _____

DATED: _____

VENDOR
By: _____
Representative of Vendor
Name of Vendor: _____
Print Name of Signatory: _____

Title _____
Address _____

BID FORM

Name of Bidder: _____

Project: _____

Project #: _____

To: _____ referred to as "OWNER"

A. In compliance with your Notice to Bidders and related documents, the undersigned bidder, having familiarized itself with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, and the drawings and specifications and other contract documents, proposes and agrees to perform the contract within the time stipulated, including all of its component parts and everything required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all applicable taxes, utility, and transportation services necessary to perform the contract and complete in a workmanlike manner all of the work required in connection with the above-referenced project, within the time limits set for completion of all work, all in strict conformity with the drawings and specifications and other contract documents, including Addenda Nos. _____ on file at the office of OWNER for the sum of:
[list all]

_____ dollars.
[written in words]

\$ _____.
[written in numbers]

B. The Bidder agrees that upon written notice of acceptance of this bid, Bidder will execute the contract and provide all bonds and other required documents within 10 working days after contract award.

C. Attached is bid security not less than 10 percent of the bid, in the amount of \$ _____, in the form of (cash) (bid bond) (certified check) (cashier's check).
[circle one]

D. This entire bid shall remain open and active for 60 days after bid opening.

E. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the Bidder after the opening of the bid, and within the time this bid is required to remain open, or at any time after that before this bid is withdrawn, the Bidder will execute and deliver to OWNER the Purchase Contract and will also furnish and deliver to OWNER any required bonds specified, certificates of insurance, and other required documents.

F. It is understood and agreed that should the Bidder fail or refuse to return executed copies of the Construction Agreement, bonds, insurance certificates, and other required documents to OWNER within the time specified, the bid security shall be forfeited to OWNER.

G. The undersigned hereby declares that all of the representations of this bid, including all documents comprising the bid package, are true and made under penalty of the perjury laws of the State of California.

INDIVIDUAL/DBA

Signature: _____

Print Name: _____

Business Address: _____

Date: _____ Telephone: _____

PARTNERSHIP

Partnership Name: _____

Signed by: _____, Partner

Print Name: _____

Business Address: _____

Date: _____ Telephone: _____

Names of Other Partners _____

CORPORATION

Corporation Name: _____,
a _____ Corporation.
(State of Incorporation)

Business Address: _____

Date: _____ Telephone: _____

By: _____ *[Required]* **[Seal]**
(President/Chief Executive Officer/Vice President) *[Circle One]*

Print Name: _____

By: _____ *[Required]*
(Secretary/Treasurer/Chief Financial Officer/Assistant Treasurer) *[Circle One]*

Print Name: _____

JOINT VENTURE

Joint Venturer Name: _____

Signed by: _____ (Joint Venturer)

Print Name: _____

Business Address: _____

Date: _____ Telephone: _____

Other Parties to Joint Venture:

If an individual joint venturer: _____ (Signature)

Print Name: _____

If a DBA joint venturer: By: _____ (Signature)

Print Name: _____

If a partnership joint venturer: By: _____
(Name)

Signed by: _____, Partner
(Signature)

Print Name: _____

If a corporation joint venturer: **[Seal]**

_____,
(Name)

a _____ Corporation.
(State of Incorporation)

Signed by: _____

Print Name: _____

Title: _____