

## GENERAL CONDITIONS

### **1. Procurement Policy**

Procurement for the Detroit Public Library, shall be carried out in a manner which provides a fair opportunity to all eligible bidders to participate. This bid shall be made without collusion with any other person, firm or corporation making any bid or proposal, or who otherwise make a bid or proposal.

### **2. Non-Discrimination Clause**

In accordance with all Federal and State legislation and Regulations governing Fair Employment. Including but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act and the Persons with Disabilities Civil Rights Act, the bidder agrees that it will not discriminate against employees or applicants for employment with respect to hire, tenure, terms, conditions or privileges of employment because or religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the ability of the individual to perform the duties of a particular assignment or position. The bidder recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against the bidder or its subcontractors, or both, in order to provide for efficient cooperation and coordination in the handling of Contract compliance programs as provided in the Elliott-Larsen Civil Rights Act, as amended, and the Persons with Disabilities Civil Rights Act, as amended. The bidder agrees to include this paragraph in any subcontract. Breach of this covenant may be regarded as a material breach of the Contract.

### **3. Unit Prices, Notations, and Workmanship**

Prices and notations must be typed or in ink. Prices shall be for new items only unless specified otherwise in this Formal Bid Document. No erasures or "white-outs" are permitted. Mistakes may be crossed out and corrections entered and initialed in ink by the persons signing the bid document. Unit prices shall be stated based on units specified. The bidder may quote on all or a portion of a quantity as specified. Quote on each item separately and indicate brand name or make. All materials furnished must be new, of latest model and standard first-grade quality, of best workmanship and design, unless expressly specified.

### **4. Prices Quoted/Cash Discounts**

Prices quoted must be net of discounts. Cash discounts will be considered in the determination of low bidder, provided discounts are based on periods of 30 days or more after acceptance of goods or billing on a bidder's invoice, whichever is later. Where net is equal to bid with cash discount deducted, award will be made to the net bid. The bidder shall extend and total the bids.

### **5. Sales Tax Exemption**

The Library is exempt from sales tax on those articles which the Library buys for its own use. Articles bought by the bidder and incorporated into other products are taxable to the bidder. Such tax should be included in the price and will not be paid as an extra by the Library. Sales tax should be included in the price and will not be paid as an extra by the Library.

**6. Specifications, Change of Specification, Errors and/or Omissions**

Specifications which refer to brand names are given for reference only. Bidders may quote on equivalent articles, provided that brand name and catalog number(s) and any deviations are noted on the bid form and complete descriptive literature is furnished. Exceptions will state "Do Not Substitute." The decision of the Library shall be final.

If any of the terms and conditions prevent you from bidding, or if you wish to request revisions of specifications, or a change in quantity which will result in lower unit cost to the Library, or get an interpretation, your request will receive consideration if presented to the Library as much in advance of bid submission deadline as possible. If any change is found desirable, the Library will notify all bidders and extend the bid submission date, if necessary. Bidders are not permitted to take advantage of any errors or omissions in specifications since full instructions will be given should they be discovered before the bid submission date.

**7. Deliver Terms/Time**

F.O.B. delivered prices are preferred. F.O.B. delivered means delivered to the dock of the institution of department noted on the bid, and will include all charges for packing, draying, etc. Bidder may, at their option, quote F.O.B. shipping point. Prices based on F.O.B. Shipping Point will be considered after adding transportation charges and insurance costs. Bidders must show shipping weight and point of shipments on all shipping point bids. Delivery time is a part of the consideration and must be adhered to. If time varies on different items, the bidder shall so state.

**8. Container**

Packing, reels, etc. if chargeable, must be shown on separate items. Return freight must be paid by bidder.

**9. Labeling of Envelopes**

Bidders must label envelopes containing bid – "This envelope contains bid on (Bid number), due on or before (-time) on (-date)." A label may be attached for convenience. The name and address of the bidder are to appear on the outside of the envelope.

**10. Receipt of Bids**

Bids must be received by the Library, 5201 Woodward Avenue, Detroit, MI 48202, prior to or on the date and time specified on the face of this bid form. Late bids cannot be accepted. The responsibility of getting bids to the Library on time rests entirely with the bidder.

**11. Withdrawal**

No bid shall be withdrawn for ninety (90) days from submission deadline unless otherwise stated in the bid document. Bidders may reduce this period if stated on bid, but such bids may be rejected on the basis of the reduced time period.

**12. Award**

The Library reserves the unqualified right to award by item (s) unless otherwise stipulated, to waive any irregularity in any bid or to reject any and all bids when, in the best interest of the Library.

**13. Start of Work**

No Contract shall become effective until the contract has been approved by the Procurement Department, Chief Financial Officer and/or Library Commission. Prior to the completion of this approval process, the Contractor will have no authority to being work on this Contract. The Chief Financial Officer shall not authorize any payments to the Contractor prior to such approval. Additionally, the Library shall not incur any liability to reimburse the Contractor regarding any expenditure for the purchase of materials or the payment of services.

**14. Inspection**

All articles are subject to inspection and testing. In the case where any articles are found to be defective in material, workmanship and/or fail to meet the requirements of this bid, the Library shall have the right to reject or retain and correct such articles. The bidder shall pay the Library for expenses incurred in correcting defects. Rejected articles will be returned to bidders at their expense for handling, packing and transportation.

**15. Freight Rates**

Unless otherwise stated, any increase in published freight rates after submission deadline will be added to the Contract price, and conversely any decrease in the published freight rates will be deducted from the contract prices. This applies only to movement of the finished product as sold to the Library.

**16. Subcontracting**

None of the services covered by this Contract shall be subcontracted without the prior, written approval of the Library.

**17. Assignment**

The performance of the Services under the Contract shall not be assigned by Contractor except upon written consent of Detroit Public Library. The Contractor may assign monies due or to become due to him under the Contract and such assignment will be recognized by Detroit Public Library, if given proper notice thereof, to the extent permitted by law. Assignment of monies will be subjected to proper offsets in favor of the Detroit Public Library and to deductions provided for in this Contract. Money withheld, whether assigned or not, will be subject to being used by Detroit Public Library for the completion of the work in the event that the Contractor defaults under the Contract. The validity of the assignment and the rights of the assignee against Detroit Public Library shall be governed by the laws of the State of Michigan. The Detroit Public Library reserves the right to assign all or portion of the services awarded under this Contract including options. The Detroit Public Library's right of assignment will remain in force over the period of the Contract or until completion of the Contract to include options whichever occurs first.

**18. Independent Contractor**

It is understood and agreed that the Contractor shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by the Contractor to perform Work hereunder shall be deemed to be Contractor's employees or independent subcontractors; that Contractor employees shall be responsible for all obligations and reports covering social security, unemployment insurance, income tax, and other reports and deductions required by state or federal law.

**19. Severability**

If any provision of this Contract or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

**20. Waivers**

- A. Neither Detroit Public Library's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and the Contractor shall be and remain liable to Detroit Public Library in accordance with applicable law and the terms of this Contract for all damages to Detroit Public Library caused by the Contractor's negligent act, error or omission in the performance of any of the Work furnished under this Contract.
- B. The waiver by Detroit Public Library of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

**21. Force Majeure**

- A. To the extent that Contractor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on Contractor by reason of or through riot, acts of war, acts of terrorism, insurrection, by order of court, legislative action, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty may be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with Detroit Public Library.
- B. In the event Contractor seeks to characterize an event a "Force Majeure Event", Contractor shall have the obligation to immediately notify Detroit Public Library at the time Contractor becomes aware of said Force Majeure event. Further, Contractor shall have the obligation to provide Detroit Public Library with written notice upon the cessation of said Force Majeure event.

## **22. Termination**

The Contractor agrees that the Library shall have the right to terminate the Contract at any time after award of the Contract, by giving ten (10) days written notice, if it is determined that such termination is in the best interest of the Library. Upon receipt of written notice of termination, the Contractor shall cease performance to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within thirty (30) calendar days of such termination reflecting any service(s) actually furnished pursuant to the Contract and to the satisfaction of Detroit Public Library.

Detroit Public Library agrees to pay the Contractor, in accordance with the terms of the Contract, for conforming service(s) actually furnished and verifiable costs that have been incurred or will be incurred by the termination, which shall be the sole amount owed to the Contractor whether for damages or otherwise, by virtue of the termination of this Contract.

## **23. Default**

Default is defined as the failure of the bidder to fulfill the obligations of their bid. An event of default shall be construed as a material breach of this contract. Detroit Public Library may by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.

Detroit Public Library's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Purchasing Manager) after receipt of the notice from the Procurement Department.

## **24. Damages for Breach of Contract**

The contractor shall be liable to the Library for any damages it sustains by virtue of the contractor's breach, or any reasonable costs the Library might incur enforcing or attempting to enforce this contract, including reasonable attorney fees. The Library may withhold any payment(s) to the contractor for the purpose of set-off until such time as the exact amount of damages due to the Library from the contractor is determined. It is expressly understood that the contractor will remain liable for any damages the Library sustains in excess of set-off.

If the contract is so terminated for breach of contract, the Library may take over the services, and pursue the same to completion by contracting with another party or otherwise, and the contractor shall be liable to the Library for any and all costs.

The Library may assess upon the contractor, for failure to meet any provision or condition of the bid, damages up to the amount of 15% or the amount of the cost incurred for the breach.

Other remedies shall also be available to the Library. The previous provisions outlined herein shall be in addition to any and all other legal or equitable remedies permissible.

**25. *Audit, Inspection or Records and Cost Verification***

The Library reserves the right to audit employees' payroll records to verify labor charges upon 72 hours' notice.

The contractor shall permit the authorized representative of the Library to inspect and audit all Data and records of the contractor relating to its performance under this contract during the term of the contract and for three (3) years after final payment. All records relating to the agreement shall be retained by the contractor during the term of the contract and for three (3) years after final payment for the purpose of such audit and inspection.

**26. *Compliance with Laws and Security Regulations***

The contractor shall comply with and shall require its associates to comply with:

1. Applicable federal, state and local laws, ordinance code(s) regulations and policies, including, but not limited to, all security regulations in effect from time to time on the Library's premises;
2. Codes and regulations for materials, belonging to the Library or developed in relationship to this project externally; and
3. The requirements of the grantor agency when grant funds that are specifically related to this contract are expended.

The contractor shall hold the Library harmless with respect to any damages arising from any violations of same by it or its associates. The contractor shall not trespass on any public or private property in performing any of the services encompassed by this contract. The contractor shall require, as part of any subcontract that subcontractors comply with all applicable laws and regulations.

**27. *Patents***

The contractor shall protect and indemnify the Library against expense of any nature, shall bear the cost of any lawsuits which may arise and shall pay damages which may be awarded against the City for the use, under this specification, of any patented device, process, apparatus, material or invention.

**28. *Indemnity***

The contractor agrees to save harmless the Library against and from any and all liabilities, obligations, damages, penalties, claim costs, charges, losses and expenses (including without limitation, fees and expenses for attorneys, expert witnesses and other consultants), which may be imposed upon, incurred by or asserted against the Library by reason of any negligent or tortuous acts or any failure by the contractor to perform its contractual obligations during the term of this contract. This provision shall apply to all matters whether litigated or not, and shall include disputes between the contractor, the Detroit Public Library and any negligent or tortuous errors or omissions attributable to the contractor, its subcontractors or agents.

**29. Use of Detroit Public Library's Name in Contractor Advertising or Public Relations**

If the Contractor should desire to use the Detroit Public Library's name, logo or any other material in its advertisement or public relations programs, the Contractor shall receive prior approval from the Detroit Public Library. Any such information relating to Detroit Public Library shall be factual and in no way imply that Detroit Public Library endorses the Contractor's firm, services, or products. The Contractor shall insert the substance of this Article in each subcontract and supply contract or purchase order.

**30. Conflict of Interest**

The contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the services under this contract. The contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

The contractor further covenants that no officer, agent, or employee of the Detroit Public Library and/or Library Commission who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract has any personal or financial interest, direct or indirect, in this contract or in the proceeds thereof via corporate entity, partnership, or otherwise.

The contractor also hereby warrants that it will not and has not employed any person to solicit or secure this contract upon any agreement or arrangement for payment of a commission, percentage, brokerage, contingent fee, other than bona fide employees working solely for the contractor either directly or indirectly, and that if this warranty is breached, the Library, may at its option, terminate this contract without penalty, liability or obligation, or may, at its election, deduct from any amounts owed to the contractor hereunder, any amounts of any such commission, percentage, brokerage, or contingent fee.

**31. Addresses**

The contractor shall notify the Library upon any change of address, telephone number, and email address, where applicable, within five (5) business days of such change. The notice shall be delivered in writing to the Procurement Department and shall include all of the contractor's changed information and the effective date of such change.

**32. Taxpayer Identification Number**

The contractor shall notify the Procurement Department upon the change of the contractor's taxpayer identification number. Such notification shall be in writing, shall include at a minimum, the contractor's taxpayer identification number in used by the City, the contractor's new taxpayer identification number and all contract and purchase order numbers under which the contractor is currently providing goods and/or services to the Library. The notification shall be delivered to the Library within five (5) business days of the contractor's receipt of confirmation of the registration of the new taxpayer identification number by the Internal Revenue Service. Failure to supply the required information, may be deemed an event of default at the sole discretion of the Library.