

COLLEGE OF WESTERN IDAHO

PURCHASING TERMS AND CONDITIONS

The College of Western Idaho "Terms and Conditions" will govern any purchase of services or products by the College. The Vendor Purchase Order is subject to these terms, and the Purchase Order and these Terms and Conditions form a binding contract between College and Vendor.

SEC. 1 DEFINITIONS

The following terms shall have the meaning stated herein:

"Agreement" shall mean the CWI Purchase Order, the CWI Procurement Terms, and all attached and referenced documents;

"College" shall mean the College of Western Idaho (CWI), a political subdivision of the State of Idaho;

"Seller" shall mean the supplier named on the front of the Purchase Order, including its agents, sales personnel, shipping and receiving personnel, and other employees acting on its behalf. Contractor, seller, vendor are used interchangeably in this Exhibit.

SEC. 2 CONFLICT IN TERMS

If the Vendor proposes or incorporates its own terms and conditions into the procurement which are different from or conflict with the College Terms and Conditions, the College Terms shall take precedent and apply to the procurement.

SEC. 3 TERMINATION

College may terminate the procurement and this Agreement (and/or any order issued pursuant to the Agreement) when Vendor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Vendor will be responsible for any costs incurred by the College to replace the goods, including but not limited to placement of a new agreement. The College, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

SEC. 4 CONTRACT RELATIONSHIP

It is understood and agreed that in the performance of the services under this Agreement, Vendor shall at all times act as an independent contractor with respect to College, and Vendor shall not be an employee of College for any purpose. The Vendor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of the Agreement, whether it may be for personal injuries or damages of any other kind. The Vendor will maintain any applicable worker's compensation insurance as required by law and will provide certificate of same if requested.

SEC. 5 PAYMENT TERMS

Invoices will be submitted within thirty (30) days of service or delivery of goods and clearly delineate what services are being billed for and during what period. Invoices will be paid by College on a net thirty (30) payment basis for

goods or services that have been delivered, installed or accepted as specified.

SEC. 6 CONFORMING GOODS OR SERVICES

The goods or services shall conform in all respects with the College's solicitation documents. In the event of nonconformity, and without limitation upon any other remedy, College shall have no financial obligation in regard to the non-conforming goods.

SEC. 7 SELLER RESPONSIBILITY

The Vendor is responsible for furnishing and delivery of all goods or services included in the Agreement, whether or not the Vendor is the manufacturer or producer of such goods or services. Further, the Vendor will be the sole point of contact on contractual matters, including all warranty issues and payment of charges resulting from the use or purchase of goods and services.

SEC. 8 SHIPPING, DELIVERY, AND INSTALLATION

All orders will be shipped or delivered directly to the department ordering the good or service at the location specified on the Purchase Order. If shipped, shipping will be on an F.O.B. Destination Freight Prepaid and Allowed basis with all transportation, unloading, uncrating, drayage, and all other associated delivery and handling charges incidental to and associated with completion of the Agreement paid by the Seller. If installation is required, pricing shall include all charges associated with a complete installation at the location specified.

SEC. 9 ACCEPTANCE/RISK OF LOSS

When the Agreement does not require installation, acceptance shall occur five (5) business days after delivery of goods or service, unless the College has notified the Vendor in writing that the product or service delivered does not meet the College's specification requirements.

Risk of loss and responsibility and liability for loss or damage will remain with Seller until final inspection and acceptance by College. Responsibility will pass to the College, except as to the latent defects, fraud and Seller's warranty obligations. Such loss, injury or destruction shall not release the Seller from any obligation under the Agreement.

SEC. 10 GOVERNMENT REGULATIONS

Vendor shall comply with all requirements of federal, state and local laws and regulations applicable to Vendor or to the goods and services provided by Vendor pursuant to the Agreement. For the duration of the Agreement, the Vendor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

Vendor warrants and represent that Vendor is not currently engaged in, and will not for the duration of this Agreement engage in a boycott of goods or services from Israel or territories under its control, pursuant to the Anti-Boycott Against Israel Act (I.C. § 67-2346). This term shall not apply to this Agreement if the total potential value of the Agreement is less than one hundred thousand dollars (\$100,000) or if Vendor has fewer than ten (10) employees.

SEC. 11 INDEMNIFICATION/INSURANCE

Vendor shall defend, indemnify, and hold the College, its administrators, agents, and employees harmless for all claims, losses, actions, damages, judgments, costs, expenses, and including reasonable attorney costs for injuries to persons or property arising out of or in connection with any activities, acts, or omissions of Vendor, its officers, agents or employees, or arising out of a failure to comply with any state or federal statute, law, regulation or act. In the event College is alleged to be liable on account of any activities, acts, or omissions of Vendor, its officers, agents or employees, then Vendor shall defend such allegations through counsel chosen by College and Seller shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses.

SEC. 12 PATENTS AND COPYRIGHT INDEMNIFICATION

Vendor shall indemnify and hold the College harmless and shall defend at its own expense any action brought against the College based upon a claim of infringement of a United States patent, copyright, trade secret, trademark, or other intellectual property for goods or services purchased or made available under the Agreement.

SEC.13 USE OF COLLEGE NAME

Vendor agrees that it will not, prior to, in the course of, or after performance under the Agreement use the College's name in any advertising or promotional media as a customer or client of Vendor without the prior written consent of the College.

SEC. 14 PUBLIC RECORDS

College as a governmental entity is subject to the public records laws of Idaho. Agreements and paperwork associated with those Agreements may be considered public documents under applicable state law and may be disclosed by College pursuant to a public records request.

SEC. 15 TAX EXEMPT STATUS

College is generally exempt from payment of Idaho state sales and use taxes. If the Vendor is required to pay any taxes incurred as a result of doing business with the College, it shall be the sole responsibility of the Vendor to pay the taxes. A State Sales Tax exemption form will be issued upon request.

SEC. 16 FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the parties shall notify the other promptly in writing of any cause for delay. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

SEC. 17 MODIFICATIONS

This Agreement may only be released, change, amended, modified or supplemented in writing signed by a duly authorized representative of each party.

SEC. 18 ASSIGNMENTS

Vendor shall not assign the Agreement, any order, or any interest herein without prior written approval of the

College. Assignment of the Agreement without approval shall, at the option of the College, cause the annulment of the Agreement so assigned. All rights of action, for any breach of such Agreement assignment are reserved to the College.

SEC. 19 GOVERNING LAW

This Agreement shall be construed in accordance with, and governed by the laws of the state of Idaho. Any action to enforce the provisions of this Agreement shall be brought in the state or federal court for the state of Idaho, Ada County, Idaho.

SEC. 20 SEVERABILITY

In the event any provision or section of the Agreement is found unconscionable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

SEC. 21 DEBARMENT

By submitting this bid/proposal, the bidder/proposer warrants and certifies eligibility to submit a bid/proposal and is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal or State agency

SEC. 22 ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids, proposals, or quotations, both oral and written, discussions, representations, commitments, course of dealing, and all other communications between the parties.

*Any revisions made to the Terms and Conditions (located at <https://cwi.edu/file/college-western-idaho-cwi-purchase-order-terms-and-conditions>) during the duration of this Bid Request, and the resulting agreements with Vendors, are considered to be incorporated by reference.

FEDERAL TERMS AND CONDITIONS

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. All contracts in excess of \$10,000 may be terminated if an award no longer effectuates the program goals or agency priorities.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity

clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity, ’and implementing regulations at 41CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the

non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) § 200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.