

City of Merced



Request for Bids (RFB) *# 09142023*

Supply and Delivery of Body Armor

Body Armor

Question Deadline:

September 1, 2023, 1:00 pm, PST

Bid Due Date:

September 14, 2023, 2:00 pm, PST

Bid Submission:

Mailed

City of Merced Purchasing Division
678 W 18th St Merced CA, 95340

Parcel/Hand Delivered

City of Merced Purchasing Division
2525 O St, Merced CA, 95340

City Representative (CR):

Julio Marquez, Purchasing Supervisor

purchasing@cityofmerced.org

Overview, Qualifications, Definitions, Bid Fill-out, Post Award

I. Overview

- A. SOLICITATION: The City of Merced's **Police Department is seeking competitive sealed bids for the supply and delivery of Body Armor.**
- B. LATE BIDS: To be considered for this solicitation, all sealed bids must be received by due date and time. Bids received after bid opening date and time will be returned to the sender unopened and will not be considered under any circumstances. Postmarks are not accepted. **Bids submitted electronically or by facsimile will not be accepted.**
- C. BID REJECTION: City reserves the right to reject any and all bids and to waive informalities and immaterial irregularities or technical defects in the bids received. The City reserves the right to reject any and all bids and reserves the right to waive and/or reject a bid for any of the following reasons: informalities, nonconforming, non-responsive or conditional bids, bids showing any alterations of form or erasures or Irregularities of any kind, additional information not requested, incomplete bids, or bids not conforming with the instructions in any way.
- D. BID OPENING: all bids received will be publicly opened and read **at the 2525 O St. location** as set forth in the Notice Inviting Bids. Bidders, or their representative, and other Interested persons may be present at the opening and reading of the bids. Following the bid opening, a bid tabulation showing the apparent lowest bid will be posted to the City's website www.cityofmerced.org.
- E. TIE BIDS: In the case of tied or identical bids, City reserves the right to award the bid based on additional criteria. If a tied bid is not rejected for any reason as described in Section I F, Bid Award, then any additional costs described in the Section IV F, "Deviations", such as short load adders, will be used to determine the lowest responsive bidder. If considering additional costs as described in the "Deviations" still doesn't produce a winning bidder (i.e. if the tied bidders quote identical short load adder prices), then any exceptions or conditions described in the "Deviations" will be considered in an effort to determine the lowest responsive bidder. If the latter still fails to produce a winning bidder, then City Council, in its discretion, may accept the one it chooses, or accept the lowest bid made by and after negotiation with the tie bidders at the time of the bid opening.
- F. BID AWARD: The bidder that meets the specifications and submits the lowest overall bid price will be awarded the bid by City, assuming the bid is determined to be complete and in compliance with the bid requirements. City has the right to delete terms or options from the bid contract documents and reserves the right to reject any and all bids and to waive irregularities in said bids. City may make multiple awards based on bid prices and corresponding items. The following is a non-inclusive list of criteria that may be used in award of the bid:
 - a) Unit cost of the product
 - b) Product specifications
 - c) Warranties or standards of quality
 - d) Capabilities to deliver product throughout the contract term

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- e) Bidder's reputation, competency, and previous customer service record
 - f) Third party hauling company's reputation, competency, and previous customer service record (if applicable)
 - g) Fully executed non-collusion affidavit
- G. TERM: City is seeking to establish a **one-time purchase**.

II. Bidder Qualifications

- A. Bidders must be capable of fulfilling orders by stated delivery times.
- B. QUALIFICATIONS: A qualified bidder is one determined by City to meet standards of business competence, reputation, financial ability, and product quality. A responsive bidder is a firm/person who has submitted a bid that conforms in all material respects to the terms and conditions, the specifications of the product, and any other requirement of the bid instructions. A responsible bidder is a firm/person who has the capability in all aspects to perform full contract requirements, and who has the integrity and reliability that will assure good faith and specific performance. Bidders that intend to utilize a third-party hauling company for completing some or all of their deliveries must indicate the name and contact information of the third-party hauling company as an attachment to the Bid Form. Before submitting a bid, the bidder must carefully examine and read all parts of the bid contract documents and be fully informed as to all existing conditions and limitations. It should be noted that, upon selection and approval of the successful bidder, the entire contents of the bid contract documents will become part of the full contract between City and successful bidder.
- C. AUTHORITY: The person signing the submitted bid must be fully authorized to represent and legally bind the bidding company to the terms and conditions described herein. A corporate officer must sign bids by corporations in the corporate name. The State of incorporation must be written in below the corporate name. Bids by partnerships must be signed in the partnership's name and signed by a partner with his/her title shown.
- D. REFERENCES: The bidder must submit with the bid a list of a minimum of three references that have purchased similar products and services from the bidder. The bidder must provide the company or agency name, contact name, and telephone number for each reference. Whenever possible, bidders should provide references for customers from the Central Valley of California.
- E. COMPETENCY: Before any contract is awarded, the bidder may be required to furnish a complete statement of financial ability and experience in performing the proposed services. In accordance with the provisions of the California Business and Professions Code and other regulations, the bidder must have and maintain current any and all necessary licenses or certificates.
- F. MATERIAL WARRANTY: Before the bid is awarded and, if applicable, the bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all products to be supplied, together with samples. The

samples may be subjected to tests to determine their quality and fitness for the intended uses.

- G. **DISQUALIFICATION:** More than one bid proposal from an individual, a firm or partnership, a corporation, or an association under the same or different names will not be considered. Reasonable grounds for believing that any bidder is interested in more than one bid for the bid contemplated will cause rejection of all bids in which such bidder is interested. If there is reason for believing that collusion exists among the bidders, any and all bids may be rejected. Bidders must execute and submit with their bid the Non-Collusion Affidavit included in this bid document.

INSURANCE: Insurance certificates are required prior to contract award. Failure to provide these in a timely manner may result in a different bid award. In addition, the requesting department requires a statement indicating that the Contractor will be able to provide an insurance certificate naming the City of Merced as an additional insured per specifications found in the terms and conditions of purchase; **and revising the cancellation clause**. The standard form used by insurance carriers **will not** be accepted unless the word **"endeavor"** is crossed out where the paragraph states, "The issuing company will (endeavor to) mail ..."; and a portion of the last paragraph shall be crossed out, which states, **"but failure to mail such notice shall impose no obligation or liability of any kind upon the company."**

III. Definitions

- A. Bid Documents = City documents, forms, exhibits, etc. attached to Bid.
- B. Bidder = the prospective or actual bidder, but not awarded.
- C. City = City of Merced.
- D. Contractor or Vendor= the awarded bidder.
- E. CR = City Representative.
- F. Bid = bid submitted.
- G. RFB = Request for Bids: City-provided electronic documents/postings.

IV. Filling out Bid

- A. **SUBMITTAL:** All bid submittals must be enclosed in a sealed envelope clearly labeled with the **RFB number and title** as found in the cover page, addressed to the CR, and delivered to any of the two locations noted on page 1 above by no later than stated time and date. **An original (and one copy)** signed bid contract documents, including all required attachments is required. Bids submitted electronically or by facsimile will not be accepted. It is the bidder's responsibility to ensure that any bid that is submitted is received in the proper format, time, and place, and the bidder is responsible for allowing adequate time for delivery of their bid by hand delivery, express delivery, US postal service, or by other means. The deadline for delivering bids is listed in this bid solicitation and the bidder is solely responsible for ensuring that their bid is received by City prior to the scheduled bid opening. City will not be responsible for any delays or transmission errors. Bids delivered before the bid opening but to the wrong

address will be considered non-responsive unless redelivery is made to the correct address before the scheduled bid opening date and time. Bidders are encouraged to bring a duplicate sealed copy of their bid prior to the bid opening, in the event a problem occurred with the delivery service they utilized. Bids received after the date and time listed above will not be accepted and will be returned to the bidder unopened.

Bids must be submitted only upon the forms provided and listed in Section IV, Bid Contract Documents that includes the following: **Bid Form, Non-Collusion Affidavit** and **Terms and Conditions of Purchase**; collectively, the bid contract documents. All items in the bid contract documents must be properly filled out in non-erasable permanent ink, signed, dated and sealed. The bid contract documents may be rejected if they show any omissions, alterations of form, the addition of information not requested, a conditional bid, or irregularities of any kind. A complete bid submittal must include all of the following components of the bid contract documents:

- A filled out, signed and dated Bid Form
 - A fully executed Non-collusion Affidavit
 - A signed and dated City of Merced Terms and Conditions of Purchase, including references and acknowledgement of receiving any and all addenda, with any deviations duly noted
- B. If your delivery date exceeds the Delivery Date stated in the Bid, enter number of calendar days for delivery in the Bid Form.
- C. **MODIFICATIONS REGARDING ADDENDA:** Any explanation desired by the bidders regarding the meaning or interpretation of this particular bid solicitation including the bid contract documents must be requested in writing, either by facsimile, regular mail, or e-mail at least five (5) business days prior to the time set for the bid opening. Any and all such interpretations or modifications must be in the form of a written request to the CR. All changes to this particular bid solicitation document including the bid contract documents initiated by the City will be through written addenda and furnished to all bidders via email and posted on the e-bid board portal of the City's website (www.cityofmerced.org). Addendum will be issued no later than 72 hours before bid opening. Any written addendum issued 72 hours before the date and time of the bid opening will become a part of the bid contract documents and must be acknowledged by each bidder by submitting a signed and dated copy of it with their bid. Failure to acknowledge any and all the addendum(s) may be cause for rejection of the bid.
- D. **BID MODIFICATION:** A bidder may modify their bid in writing provided such communication is received by City prior to the date and time of the bid opening. Modifications of any bid prices must be submitted to City in a clearly marked and sealed envelope prior to the time of the bid opening. Proposed modifications of bid terms and conditions other than the bid prices may be sent to City via facsimile, e-mail, regular mail, or courier prior to the time of the bid opening. Except for hand deliveries, it shall be the responsibility of the respective bidder to determine if their written modification was received in time by City. Any written communication not sent in a sealed envelope shall not reveal the bid price and shall state the addition or subtraction or other modification so that the final prices or terms will not be known by City until the sealed bids are opened. City reserves

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the right to accept or reject any proposed modifications of the bid terms and conditions.

- E. BID WITHDRAWAL: Any bid may be withdrawn any time prior to the stated bid opening date and time (closing time) only by a written request that is filed with the City requesting withdrawal of their bid. The withdrawal request must be executed by the bidder or a duly authorized representative. The withdrawal of the bid does not prejudice the right of the bidder to file a new bid prior to the bid closing time. No bids may be withdrawn after the bid opening date and time.
- F. DEVIATIONS: Any deviation from the specifications described herein or in a written addendum that is proposed by a bidder must be noted in detail and a copy of the proposed specification must be attached to the Bid Form at the time of submission. The absence of a proposed change in the specifications will hold the bidder strictly accountable to the specifications as described herein. If proposed deviations from the specifications are submitted, the bidder's name should be clearly shown on each document. The City reserves the right to accept or reject any proposed deviations from the described specifications.
- G. NOTE: Failure to provide required documentation and adhere to all the above specifications may cause the bid to be deemed non-responsive.

V. Post Award Submittals (awarded contractors only)

- A. Provide any additional items required by CR or elsewhere in the Specifications.
 - City of Merced Business License
 - Evidence of liability insurance with proper coverage amounts and endorsements as stated in the City's terms and conditions of purchase.
 - Signed and dated fully executed agreement

CONTINUED ON NEXT PAGE

Specifications, Bid Form, Special Instructions

VI. General Specifications

- A. All items must meet or exceed National Institute of Justice Standard 0101.06 Threat Protection (level IIIA). All applicable Federal, State, and local requirements and all applicable requirements.
- B. If the manufacturer or bidder has any exceptions (variations, deviations, deletions, additions, and the like) from these specifications, they must state exactly what those exceptions are and any impact on form, fit, or function in its bid. City reserves the exclusive right to either accept or reject those exceptions and City's decision is final. Bidder, in submitting its bid, understands and acknowledges these requirements and conditions.

VII. Detailed Specifications

- A. Product to be supplied is Body Armor
- B. Product must meet or exceed the following specifications:
 - NIJ Standards 0101.6 Threat Protection (Level IIIA)
- C. Bidders must have the ability to locally size and fit each officer as needed.
- D. Bidder must have the ability to provide samples of qualified body armor for review and approval before bid is awarded.
- E. Body armor panels must be removable and have the ability to be used in outer carriers.
- F. Bidders must submit with their bid contract documents the following:
 - The product to be supplied.
 - Name and address of the product manufacturer.
 - Product bulletin and typical properties and options
 - Proof of NIJ Specifications.
- G. Estimated quantity required is 30 vests. Nothing in these estimated annual quantities must be construed as obligating the City to purchase specific quantities, as these quantities may vary depending on actual operating conditions and demands during the year. The City reserves the right to purchase any volume of the product listed, at the contract price, regardless of stated estimates of quantities. No price adjustments will be allowed as a result of an increase or a decrease in the quantity purchased.
- H. All bids submitted must include a base unit price, FOB destination, Merced at the specified delivery location below. Bidders shall provide bid prices on the Bid Form including all costs associated with providing and delivering the product to the agency's facility, including materials, labor, equipment, transportation,

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insurance, overhead, profit, and all applicable taxes except sales tax in effect at the time of delivery. Bids qualified by additional or conditional charges such as CPI, escalators, fuel surcharges, or transportation charges between the supplier and the final delivery points will not be allowed.

- I. Bid Form will be incorporated as part of any resulting purchase order or contract as pricing reference.
- J. All Bids must be signed.

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CITY OF MERCED

PURCHASING
DEPARTMENT

BID FORM

purchasing@cityofmerced.org

MAIL SEALED BIDS TO:
678 W 18th St Merced CA
95340

**PARCEL & HAND
DELIVERED BIDS GO TO:**
2525 "O" ST MERCED CA
95340

QUOTE HEREON YOUR LOWEST PRICES F.O.B. MERCED FOR THE FOLLOWING EQUIPMENT, MATERIALS, SUPPLIES OR SERVICES. NO ALLOWANCE FOR FREIGHT, CARTAGE, PACKING, OR POSTAGE UNLESS SPECIFIED ON THIS BID. WHERE BRAND OR MAKE IS SPECIFIED, SIMILAR OR EQUAL WILL BE CONSIDERED.

SEALED BIDS MUST BE IN THIS OFFICE BY:

**Friday September 14th, 2023 2:00
P.M.**

DEPARTMENT: Police Department

REQUISITION: Body Armor

Quantity	UOM	Description	Unit Price	Extended Price
30	ea	Body Armor, NIJ Standards 0101.6 Threat Protection Level IIIA	\$	\$
TOTAL				\$

We have stated hereon the prices at which we will furnish and deliver the equipment, materials, supplies or services as specified above.

Delivery will be made in _____ days after receipt of order (A.R.O.), except as otherwise indicated.

Note: The City reserves the right to reject any and or all bids, split the bid award, or to accept the bid that best serves the public purpose, even though it may not be the lowest.

COMPANY: _____

BY: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

PHONE: _____

EMAIL: _____

PAYMENT TERMS: (Net 10, 30, 45) _____

CITY OFFICERS AND EMPLOYEES INELIGIBLE TO BID

Bidders are advised that under Government Code Section 1126 officers and employees of the City of Merced are **not eligible** to bid on City contracts (to provide equipment, materials, supplies or services to the City) or to enter into a lease or other agreements with the City. Any bid submitted by a City officer or employee, either individually or through a partnership, corporation, or other form of business entity or association, will be rejected and may subject the employee to discipline under the City's Personnel Rules, Article XIX Section 19.02.

NOTICE

ALL BIDS MUST BE SIGNED

VIII. Special Instructions for Deliveries

A. Packaging

1. Pack all items to ensure that each item can be handled and transported safely from the shipping point, during transit, arrival at the destination point, offloading, and storage. Packing materials and packaging must be appropriate to the items.

Include FOB Merced, CA delivery costs in the unit prices; no exceptions.

B. Rejections and Pickups

1. Note that City reserves the right to reject product that fails to comply with specifications, are damaged, or are in excess of ordered quantities.
2. Pick up product to be returned to vendor within five business days of notification and process credit for returned product within ten business days of receipt.

C. Material Handling

1. **SAFETY REQUIREMENTS:** The bidder, their employees, subcontractors, and/or agents must conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety, and they must adhere to all State, Federal and Occupational Safety and Health Act (OSHA) safety standards while they are on the premises of City. Furnished equipment, materials, and/or services must comply with all OSHA standards and regulations, and all applicable governmental laws and orders. City reserves the right to individually refuse any shipment, at its sole discretion, which cannot be unloaded using safe and proper techniques. Any such refusal must result in the return of the product at the successful bidder's sole expense. If requested by City, the successful bidder and/or the firm providing transportation of the product shall submit to a safety briefing at the City's site before commencing deliveries. The successful bidder and/or the firm providing transportation of the product are required to comply with the site-specific safety requirements. In addition, if requested by City, the successful bidder and/or the firm providing transportation of the product may be asked to review site safety materials and provide a signed acknowledgement of their receipt of the site safety materials.

D. Product Orders

1. A purchase order as part of the resulting agreement will be issued to the successful bidder by City.
2. All product sales must be invoiced to City.
3. The contracted unit cost of the product is the awarded bid price.
4. Successful bidder may seek a price increase for any nontrivial change requested by City in the terms and conditions of purchase order and/or purchase agreement.
5. Successful bidder may not change the price throughout the term of the contract unless by mutual written agreement between City and successful bidder.

Quantity, Pricing, Contract Documents

IX. Quantities

- A. Order quantities are firm fixed amounts and are not subject to the manufacturer's standard packaged quantities.
- B. City reserves the right to order additional quantities than stated as approximate amounts after initial award based on Vendor's willingness to hold their bid price and mutually agreed-upon quantities and delivery dates.
- C. Yearly consumption may be lower or greater so City will adjust order quantities accordingly.
- D. Resulting contract or purchase order will not be an exclusive purchase agreement; thus, City reserves the right to procure products from other vendors when it is in the best interest of the City.

X. Pricing

- A. **Unit Price:** include everything but sales tax.
- B. **Delivery Costs:** include delivery costs in unit price.
- C. **Sales Tax:** City will add the appropriate sales tax to each order.
- D. **Additional Charges:** none; do not charge restocking or returned items; minimum orders; deliveries; disposals; deposits; environmental fees; fuel surcharges; etc.
- E. **Fixed Prices:** applies to all items for orders placed within the term of the contract for each specified year after bid closing through final delivery.

XI. Bid Results Price Sheet

- A. Awarded bidder's Bid Form price sheet, as accepted by City, will be incorporated as part of the purchase order agreement or contract.

XII. Bid Contract Documents

- A. Bid Form
- B. Non-collusion Affidavit
- C. Terms and Conditions of Purchase

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Non-Collusion Affidavit

Note: To be executed by Offeror and submitted with Offer.

State of _____
(the State of the place of business)

County of _____
(the County of the place of business)

_____, being first duly sworn, deposes and
(name of the person signing this form)

says that he/she is _____ of
(title of the person signing this form)

_____, the party making the foregoing offer
(name of offering company)

that the offer is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the offer is genuine and not collusive or sham; that the OFFEROR has not directly or indirectly induced or solicited any other offeror to put in a false or sham offer; that the OFFEROR has not directly or indirectly colluded, conspired, connived, or agreed with any offeror or anyone else to put in a sham offer, or to refrain from offering; that the OFFEROR has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the offer price of the OFFEROR or any other offeror, or to fix any overhead, profit, or cost element of the offer price, or of that of any other offeror; that all statements contained in the offer are true; and, the OFFEROR has not, directly or indirectly, submitted his or her offer price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, depository, or to any member or agent thereof, to effectuate a collusive or sham offer, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a OFFEROR that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the OFFEROR.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct, and that this declaration is executed as set forth.

Signed:

(signature)

Printed Name:

(name of the person signing this form)

Title:

(title of the person signing this form)

Date:

(date signed)

Notary is not required for this offer.

CITY OF MERCED TERMS AND CONDITIONS OF PURCHASE

1. Agreement: This purchase order, consisting of these standard terms and conditions, and any attachments hereto, evidence acceptance by the City of Merced ("City") of the offer from the provider of goods and or services ("Supplier") which are the subject of this purchase order and constitutes a binding agreement upon the terms and conditions set forth herein without further action or agreement of Supplier. Any terms or conditions (including price and delivery dates) proposed by seller which are inconsistent with or in addition to these terms shall be void and of no effect unless and to the extent expressly accepted by purchaser in writing.

2. Performance, Delivery and Acceptance: Supplier shall supply the goods and or perform the services, with the schedule and term, as specified herein. Time is of the essence. All goods shall be delivered "free on board (F.O.B.) destination" to the location specified herein, full freight pre-paid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without extra charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and to prevent potential damage from weather or transportation. City's purchase order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to City only upon City's acceptance of such goods.

3. Compensation schedule: City shall make payment within thirty (30) calendar days upon acceptance of satisfactory completion of performance and or delivery of goods and receipt of related invoice(s). Supplier is responsible for all costs and expenses incident to the performance of this purchase order, including without limitation, costs, taxes, and all other costs of doing business. City processes invoices for payment once each week. Supplier understands and agrees that the net payment period and cash discount period will extend to the date the invoices are paid.

4. Taxes: Supplier shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods. Where a tax exemption is available, such tax shall be subtracted from the total compensation and identified.

5. Warranty: Supplier represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Supplier's representations regarding its skills and knowledge. Supplier shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California. Supplier warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured pursuant to detailed design furnished by City, Supplier assumes design responsibility, and warrants that all goods shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Supplier's warranties shall run to City and shall not be deemed to be exclusive. Supplier agrees to promptly replace or correct any incomplete, inaccurate or defective goods or services at no further cost to City when defects are due to the negligence, errors or omissions of Supplier.

6. Changes: City reserves the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by the Director of Finance ("Director") or his/her designee. Upon receipt of notice, Supplier shall promptly make the changes in accordance with the terms of the notice. If the change will cause an increase or decrease in the cost of or time for performance, Supplier must deliver to City a statement showing the effect of any such changes within ten (10) calendar days of receipt of the City's notice of change. An equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Failure to submit the statement timely shall constitute

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Supplier's consent to perform the change without increase in compensation or time for performance. Changes may only be made in writing.

7. City Liability: If an article sold or delivered to purchaser is protected by a patent or copyright, seller agrees to indemnify, defend, save, and hold harmless purchaser from and against any and all suits, claims, judgments, and costs instituted or recovered against it on account of the use or sale of such article by the purchaser in violation of rights under such patent or copyright.

8. Termination for Default or Convenience: City may, by written notice, terminate this purchase order in whole or in part for default: (i) if Supplier fails to timely deliver the goods, or perform the services, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed are incorrect or unsatisfactory; (iii) if Supplier fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order; or (iv) if the Supplier becomes insolvent. If this purchase order is terminated for default, City, in addition to all the rights afforded by law, shall have the right to charge Supplier the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may offset any such charge against any amounts which had or may become payable to Supplier under this purchase order. City may, after thirty (30) days written notice to Supplier, terminate this purchase order without cause or penalty.

9. Insurance: When applicable, seller must provide satisfactory proof of general liability coverage at least as broad as ISO Form CG 0001 and automobile insurance both in the amount of not less than \$1,000,000 per occurrence/accident. The City of Merced must be named as an additional insured and receive a 30-day notice of cancellation. Additionally, seller shall maintain workers' compensation coverage as required by state law and the policy shall be endorsed to waive the insurer's subrogation rights against purchaser. Applicability of insurance requirement is the sole determination of the City.

10. Indemnity: To the fullest extent permitted by law, Supplier agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability (collectively "claims"), including without limitation claims for injuries or death to persons or damage to or destruction of property, including economic loss, caused by or resulting from the acts or omissions of Supplier, its officers, agents, employees or subcontractors, in the performance of this purchase order, or the breach by Supplier of any of its obligations under this purchase order. Supplier's obligation to protect, defend, indemnify, and hold harmless, shall specifically extend to any and all employment related claims of any type brought by employees, contractors, subcontractors or other agents of Supplier. Supplier warrants that it is meeting its obligations under the Affordable Care Act ("ACT") and/or any other similar federal or state law, and willfully indemnifies and holds harmless City for any penalties, fines, adverse rulings, or tax payments associated with Supplier's responsibilities under the act.

11. Licensing: Seller warrants that it has complied with any and all state and local licensing requirements and agrees to provide proof of a current City of Merced Business License Tax Certificate if Supplier's company is located in or provides services in the City of Merced.

12. Nondiscrimination: Supplier and all of Supplier's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

13. Assignability: Supplier shall not assign any of the work to be performed under this purchase order nor shall Supplier subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent.

14. Waiver: Supplier agrees that City's waiver of any breach or violation of any provision of this purchase order, or acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. City's inspection and warranty rights are not waived by payment or any other action by City.

15. Independent Contractor: It is understood and agreed that Supplier and all person(s) employed or contracted by Supplier shall act as, and be, an independent contractor and not an employee, agent,

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joint venture, or partner of City. Supplier has full rights to manage its employees and contractors under this Agreement. Supplier shall retain the right to provide goods or perform services for others during the term of this purchase order.

16. Confidential Information: All data, documents, discussions or other information developed or received by or for Supplier in performance of this purchase order are confidential and not to be disclosed except as authorized by City, or as required by law.

17. Supplier's Records: Supplier shall maintain all records evidencing or relating to performance and amounts charged to or paid by City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Supplier pursuant to this purchase order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by City. Copies of such documents shall be provided to City for inspection at City Hall if requested and if practical to do so, otherwise records will be inspected at Supplier's business location.

18. Conflict of Interest: Supplier certifies that no City officer, employee or authorized representative has any financial interest in the business of Supplier and that no person associated with Supplier has any interest, direct or indirect, which could conflict with the faithful performance of this purchase order. Supplier is familiar with the provisions of California Government Code section 87100, *et seq.*, and certifies that it does not know of any facts which would violate these laws. Supplier will promptly advise City if a conflict arises.

19. Severability: In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

20. Governing Laws and Venue: Supplier shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. The Laws of California shall govern this purchase order, and the venue of any action brought hereunder must be laid in or transferred to the County of Merced, State of California.

COMPANY:

BY:

TITLE:

SIGNATURE:

DATE:

PHONE:

EMAIL:
