

MPS TERMS AND CONDITIONS FOR BIDS

- **Scope** – These terms and conditions shall apply to any and all award(s) resulting from a formal bid, except as follows: In the event of a conflict between these terms and conditions and the terms and conditions set for in the bid, the terms and conditions in the bid shall govern. Milwaukee Public School (“MPS”) will not sign a vendor’s contract and any attempt to use a vendor contract or otherwise alter these terms and conditions will invalidate your bid.
- **Substitutes** - Bids on alternate or substitute items “as equal” will be considered (except when the bid specifies “no substitutes”) if full descriptive literature is included. Bidder must specifically highlight or direct MPS to the precise place in the literature that demonstrates all of the specifications are equal. Bidder must specifically circle and explain any deviations from the bid specifications. The Procurement Manager will be the final judge as to whether an item meets the specifications for the bid.
- **Business Days** means, when the FOB destination is a specific school, the day(s) that there is regularly scheduled school according to the MPS School Calendar for that school, located on the MPS portal at www.mpsportal.milwaukee.k12.wi.us. When the FOB destination is for a destination other than a school, Business Days means Monday through Friday, holidays excluded.
- **Contract** – Contract means the legally binding instrument containing all of the terms and conditions that govern a purchase resulting from a bid. The term “Contract” is used interchangeably with Purchase Order.
- **Contractor** – means the bidder to whom an award is made. This term is used interchangeably with “successful bidder” or “Vendor”.
- **Choice of Law/Forum** – Milwaukee County, Wisconsin shall be the sole forum for all disputes and Wisconsin law shall be the sole choice of law.
- **Non-Appropriations** – The failure of the Board of School Directors to appropriate funds for contract/purchase order shall void the contract.
- **Indemnification** – The successful bidder shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS a result of granting of this contract/purchase order to the successful bidder, or that may result from the carelessness or neglect of the successful bidder, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the successful bidder, against such persons, firms or corporations carrying out the provisions of the contract/purchase order, the successful bidder assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys fees or other expenses resulting therefrom.

- **Waiver** – One or more waivers by any party of any term of the contract shall not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent, similar act by such party.
- **Taxes** – Bids shall not include Federal Excise and Wisconsin Sales Taxes as MPS is exempt from payment of such taxes.
- **Packaging** – Materials shall be clearly labeled and packaged in accordance with Federal and Wisconsin requirements and as specified in the terms and conditions of the Request for Bid.
- **Delivery** – All bid prices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. All deliveries must be inside the receiving location building. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID. If there is a freight increase prior to delivery of the goods, any additional cost must be at the contractor's expense.

Failure of the successful bidder to adhere to delivery schedules as specified gives rise to an automatic right of MPS to cancel the contract/purchase order, replace the goods and charge the successful bidder with the difference between the replacement costs and the bid price.

- **Delays in Delivery** – Delays in delivery caused by any bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God, or any other delays deemed by the Procurement Manager to be clearly and unequivocally beyond the contractor's control, will be recognized by MPS. The successful bidder may be relieved of the responsibility of meeting the delivery time as stipulated in the contract upon bidder's filing with the Procurement Manager just and true statements requesting an extension of delivery, signed by the contractor, and giving in detail all the essential circumstances which, upon verification by MPS, justify such action under the provisions of this section by the Procurement Manager. The request must be filed with the Procurement Manager no later than seven calendar days prior to the actual delivery date. Failure to file this request for delivery extension shall render the contractor liable for the difference between the replacement costs and the contract price, and other costs, as applicable, under the Uniform Commercial Code.
- **Cancellation** – MPS reserves the right to cancel any order or contract for failure of the successful bidder to comply with terms, conditions and specifications of the resulting contract. In such instances, the defaulting bidder shall be liable to MPS for any cost to MPS in excess of the default over contract prices.
- **Rejection** – MPS reserves the right to reject any items that do not conform to the Request for Bid and/or the specifications. All return freight charges associated with the rejected materials shall be borne by the vendor.

- **Patents** – Any contract arising from this bid shall be given upon the condition that MPS is protected by the contractor against all liability, loss or expenses by reasons of any patent or trademark litigation now existing or hereafter instituted, arising out of any alleged infringement of patent or trademark on merchandise hereby ordered, or any part thereof.
- **New Equipment** – Unless otherwise specified in the bid, all equipment bid shall be new, unused and not previously titled. Units classified as factory rebuilt, prototype of discontinued are not acceptable.
- **Warranties** – Any and all warranties must be valid in the United States.
- **Unsuitable Equipment** – Bids will not be considered for equipment that has previously failed to perform satisfactorily.
- **Reservations** – The right is reserved to accept or reject in whole or part any or all bids; to award within 10% of total quantities requested; and award items separately or in total, if not stated otherwise, whichever is in the best interest of MPS.
- **Safety Requirements** – All material, equipment and supplies provided to MPS must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code, Rules of the Industrial Commission on Safety, and all applicable OSHA Standards. All electrically-powered equipment must be UL listed or MPS-approved equivalent.
- **Withdrawal/Replacement of Bids** – Bids may be withdrawn only in total and only by written request to the appropriate Procurement Division staff listed on the bid prior to bid opening. Prior to bid opening, bids may be amended by submitting a later dated bid that specifically states that it is amending, and thereby replacing, an earlier bid. No bid may be amended after bid opening.
- **Substitutions and Equivalents** – Substitutions of equivalents of specified items may be permitted at the sole discretion of the Procurement Manager.
- **Amendment of Bids** – Bids may be amended prior to opening. Amendments will be posted to the MPS portal at www.mpsportal.milwaukee.k12.wi.us. Bidders are responsible for checking this site prior to the opening date and will be presumed to comply with any amendments.
- **Counter Offer** – Counter offers, changes to any terms, conditions, specifications or plans stated herein, made without approval from the Procurement Manager shall result in bid rejection.
- **Responsive Bidders** – Prior to award, MPS may require submission by bidder of proof of financial stability/ability and experience in performance of similar obligations. Quantities involved, time of delivery, purpose for which required,

competency of bidder and ability to render satisfactory service in a past performance will be considered in determining status as a responsible bidder.

- **Assignment** – No contract may be assigned, sublet or transferred without the prior written consent of the MPS Procurement Manager.
- **Prices** – Bid prices shall be stated in the units and extended as requested. Prices shall be firm and binding for 60 calendar days following bid opening date.
- **Compliance with MPS’ Code of Ethics.** Successful bidder during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of successful bidder, has a conflict of interest. Successful bidder hereby attests it is familiar with MPS’ Code of Ethics, providing in pertinent part, “[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS.”
- **Livable Wage.** Successful bidder shall adhere to the MPS’ Livable Wage Policy that requires anyone having a contract with MPS must pay all of their employees a livable wage in accordance with City of Milwaukee Ordinance 310-13. The current livable wage rate can be found at the City of Milwaukee website <http://city.milwaukee.gov/ImageLibrary/Groups/doaPurchasing/forms/LivingWageTable.docx> .
- **Apparel.** If the resulting contract is for apparel for \$5,000.00 or more, the successful bidder agrees to provide only items manufactured by responsible manufacturers and to require the same of any subcontractor.
- **Tie Bids** – In the event of a tie bid where two or more bids are judged equal, consideration will first be given to a HUB vendor, second to a vendor located within the City of Milwaukee, third to a vendor located within Milwaukee County and fourth to a vendor located within the State of Wisconsin. If these considerations do not produce a winning bidder, the award should be made by a witnessed and documented flip of a coin.
- **Non Discrimination** – Contractors and suppliers are obligated not to discriminate against any employee or applicant for employment because of race, color, religion, handicap, national origin, sex, age, or socio-economic status. This obligation shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- **Health and Dental Benefits** – MPS encourages its contractors to provide health and dental benefits to their employees on a voluntary basis.
- **Pricing** - Unless otherwise indicated, all pricing must remain firm for the contract period.

Dated 4/14/14