



GARLAND

PURCHASING

**THE CITY OF GARLAND STANDARD TERMS AND
CONDITIONS**

CITY OF GARLAND STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS APPLY TO ANY PROCURMENT OF PRODUCTS OR SERVICES BY THE CITY.

- 1. ENTIRE AGREEMENT:** These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Garland's request for Bid/Proposal are applicable to Contracts/Purchase Orders issued by the City of Garland hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Purchasing Department and the Supplier. No Terms and Conditions contained in the Sellers Bid/Proposal, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.
- 2. OFFICIAL BID NOTIFICATION:** The City of Garland utilizes the following for official notifications of bid opportunities: garlandtx.ionwave.net and the Commercial Daily Record of Dallas County. These are the only forms of notification authorized by the City. The City is not responsible for receipt of notifications or information from any source other than those listed. It shall be the supplier's responsibility to verify the validity of all bid information received from any source other than the City of Garland. There will be NO COST to the Seller for using IonWave for its Bids/Proposals.
- 3. FRAUD POLICY:** The City of Garland is committed to preventing Fraud, Waste, Abuse and Unethical Conduct by its employees. Suppliers and potential suppliers should become familiar with the City of Garland's Fraud Policy located on our website at <https://www.garlandtx.gov/gov/hk/audit/fraud.asp>, City Hall/Internal Audit/fraud Policy. Suppliers have a responsibility to report any known or suspected fraudulent activities, or unethical conduct, by calling the City's Hot Line at 972-205-2739 or write to, Fraud Hot Line P.O. Box 469002 Garland TX 75046. All contacts will be held in strict confidence.
- 4. COUNCIL POLICY:** Bidder shall comply with the requirements of City Council Policy OPNS-04 Qualifications for Doing Business with the City of Garland and OPNS-28 Business Conduct with Delinquent Account Holders and litigants attached hereto.
- 5. PROHIBITION AGAINST PERSON INTEREST IN CONTRACTS:** No City of Garland employee shall have a direct or indirect financial interest in any contract with the city, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the city.
- 6. COMPETITIVE PRICING:** It is the intent of the city to consider Interlocal Cooperative Agreements and State/Federal contracts in determining the best value for the city.
- 7. INTERLOCAL AGREEMENT:** Successful bidder agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the City. The city is a participating member of several interlocal cooperative purchasing agreements. As such, the city has executed interlocal agreements, as permitted under Chapter 791 of the Texas Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful supplier may be asked to provide products/services based upon the bid price, to any other participant.
- 8. RIGHT TO AUDIT:** The city shall have the right to examine and audit after reasonable notice any and all books and records of Seller/Contractor that may relate to this agreement including, without limitation, the performance of Seller/Contractor, its employees, agents, and subcontractors. Such books and records will be maintained in accordance with generally accepted accounting principles and shall, upon request and at the city's request, be made available at a location designated by the city. Seller/Contractor shall, except for copying costs, otherwise bear all costs of producing such records for examination and copying by the city. Unless otherwise agreed by the parties, such records must be made available to the city within five business days. The provisions of this paragraph shall survive the termination of this agreement.
- 9. CORRESPONDENCE:** The Bid number must appear on all correspondence and inquiries pertaining to the Request for Bid. The Purchase Order number must appear on all invoices or other correspondence relating to the contract.
- 10. INDEMNITY/INSURANCE:** See attached City of Garland minimum requirements, required for all on-site work on city property.

11. EASEMENT PERMISSION: The contractor shall not enter or use private property except as allowed by easements shown on the contract documents or if the contractor obtains specific written permission from the property owner.

12. CITY PROVIDED SERVICES: The contractor, or any sub-contractor or supplier shall use only city provided services in performing this contract including but not limited to: Electric (if available), Water, Sanitation and Solid Waste Services. The rate charged by the city shall be the same as charged for the same or similar services. Commercial Solid Waste rates may be obtained from City of Garland Environmental Waste Department at, 972-205-3500.

13. CONTRACTOR EQUIPMENT IDENTIFICATION: All equipment used on the project shall be clearly marked with the contractor's name and LOGO. Subcontractor equipment shall also be similarly marked.

14. DELIVERY: All goods shall be delivered F.O.B. Destination unless otherwise authorized herein. C.O.D. shipments or deliveries are not permitted.

15. SPECIFICATIONS-SAMPLES: If bidding on other than the item requested, sellers bid must identify the Trade Name, Manufacturer's Name and/or Catalog Number, and certify the item offered is equivalent. Descriptive literature must be submitted with alternate brands. Samples shall be furnished free of expense to the city and if requested, may be returned at bidder's expense.

16. TIE BIDS: In the event of tie bids, preference will be given to the bidder who offers the best value to the city in accordance with State Law.

17. ERROR-QUANTITY: Bids must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.

18. ACCEPTANCE: The right is reserved to accept or reject all or part of the bid, and to accept the offer considered most advantageous to the city by line item or total bid.

19. OEM PARTS: All vehicle options to be OEM factory installed unless otherwise identified on this bid.

20. SUBSTITUTION: Every delivery of goods by the supplier must comply with all provisions of this order including the specifications, delivery schedule, quantity and quality. Any delivery which does not conform to the buyers requirements shall constitute a breach of contract. Seller does not have authorization to make a substitute unless it is agreed to by the buyer.

21. BID LIST REMOVAL: The city reserves the right to remove a supplier from any Bid List for: (1) continued failure to be responsive to the city, (2) failure to deliver merchandise within promised time, (3) delivery of substandard merchandise or (4) failure to comply with the Contract/Purchase Order requirements.

22. DELIVERY TIMES: Deliveries to the City Warehouse or other designated City Buildings or Facilities will be accepted during normal working hours, i.e. 8:00a.m. to 4:00p.m., Monday through Friday unless other arrangements have been made. Deliveries being made directly to city work sites should be coordinated with the city employee responsible for the work being performed at that site.

23. PACKAGING: Unless otherwise indicated, items will be new, not rebuilt, in first class condition, and in containers suitable for damage-free shipment.

24. WARRANTY: By accepting this order seller warrants that the goods and services to be furnished will be free from defects in materials and workmanship, be of merchantable quality and fit for ordinary use, be in full conformance with buyer's specifications, drawings and data, seller's samples or models, and express warranties, and to be fit for any buyer's particular purpose expressly or impliedly known. These warranties are in addition to all others given to the buyer by the seller or by law. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the buyer, and any such limitations or exclusions are void.

25. TERM CONTRACTS: Except as otherwise provided herein, prices must remain firm for the entire contract period, including any periods of extension or renewal. At the time of any renewal or extension of the contract, the city or the supplier may request a price adjustment based upon the economy. All requests for a price adjustment must include detailed documentation and rationale to support the requested adjustment. The party to whom a request for price adjustment is made may, in its sole discretion, accept or reject the request. Any

price adjustment must be mutually agreed upon in writing by the parties, and shall be effective for the applicable renewal term.

26. TERM CONTRACT QUANTITIES: The quantities in the request for bid are estimated requirements and the city reserves the right to increase or decrease the quantities or cancel any item to be furnished. The successful bidder shall have no claim against the city for anticipated profits for quantities diminished or deleted.

27. TERM CONTRACT SHIPMENTS: The supplier will make shipments under this contract only when requested and only in the quantities requested. If there are minimum shipments or standard packaging requirements please note the items affected.

28. CONTRACT RENEWAL OPTIONS: In the event a clause for option to renew for an additional period is included in the request for bid, all renewals will be based solely upon the option and agreement between the city and the supplier. Either party dissenting will terminate the contract in accordance with its initial specified term.

29. TAXES-EXEMPTION: All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be executed for the successful supplier.

30. ASSIGNMENT: Seller shall not assign this order or any interest herein, including any performance or any amount which may be due or become due hereunder, without buyer's prior written consent.

31. INVOICING: Send ORIGINAL INVOICE to address indicated on the purchase order. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

32. INSPECTION: Goods purchased are subject to inspection and approval by buyer. Buyer reserves the right to reject or refuse acceptance of goods which are not in accordance with buyer's instructions, specifications, drawings and data, or seller's warranties (expressed or implied). Goods not accepted will be returned to seller at seller's risk and expense. Payment for any goods shall not be deemed an acceptance thereof.

33. ELECTRONIC SIGNATURE – UNIFORM ELECTRONIC TRANSACTION ACT: The city adopts Vernon's Texas Statutes and Codes Annotated Business and Commerce Code Chapter 43. Uniform Electronic Transaction Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.

34. FUNDING OUT CLAUSE: This agreement may be terminated by the city without notice and without penalty or liability in the event that (1) the city lacks sufficient funds for this agreement; (2) funds for this agreement are not appropriated by the City Council of the City; and (3) funds for this agreement that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to the city.

35. DISPUTE RESOLUTION: Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, contractor agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the claim shall be delivered by the contractor to the city within one-hundred eighty (180) days after the date of the event giving rise to the claim, which notice shall request a written response to be delivered to the contractor not less than fourteen (14) business days after receipt of the notice of claim; (ii) if the response does not resolve the claim, in the opinion of the contractor, the contractor shall give notice to that effect to the city whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the claim; (iii) if those persons cannot or do not resolve the claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the claim.

36. DISCLOSURE OF CERTAIN RELATIONSHIPS: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any supplier or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the supplier or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the City of Garland not later than the 7th business day after the date the supplier or person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local

Government Code. An offense under this section is a Class C misdemeanor. Chapter 176 and the questionnaire may be found at www.garlandpurchasing.com.
By submitting a response to this request, supplier represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

37. PERFORMANCE: If seller fails to comply with any provisions or terms of this order, the buyer, may at buyer's option, cancel this order or any other orders outstanding. In the event of cancellation buyer retains all rights and remedies it may have.

38. PATENTS: Seller agrees to indemnify and hold harmless the buyer against all costs and expenses, including attorneys fees and undertakes and agrees to defend at seller's own expense, all suits, actions or proceedings in which buyer or the users of buyer's products are made defendants of actual or alleged infringement of any U.S. or foreign patent resulting from the use or sale of the items purchased hereunder (except infringement necessarily resulting from adherence to buyer's specifications or drawings) and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding.

39. APPLICABLE LAW: This agreement shall be governed by the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

40. VENUE: This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Dallas County, Texas.

41. TERMINATION: The city at any time after issuance of this agreement, by 30 days written notice, has the absolute write to terminate this agreement for cause or convenience. Cause shall be the supplier's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Contract/Purchase Order. In such case the supplier shall be liable for any damages suffered by the city. If the agreement is terminated for convenience, the supplier has no further obligation under the agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the city as of the effective date of the termination.

42. FORCE MAJEURE: To the extent either party of this agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the parties control and not attributable to it's malfeasance, neglect or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

43. BEST AND FINAL OFFER: During evaluation process City reserves the right to request a best and final offer upon completion of negotiations.

44. WORKING DAY OR DAYS: The following are legal holidays for the City of Garland:
New Year's Day , Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day
Thanksgiving (2 days), Christmas (2 days). Business Hours: 8:00a.m. to 5:00p.m. Monday through Friday.