

FORSYTH COUNTY SCHOOL SYSTEM

Purchasing GENERAL TERMS AND CONDITIONS

1.0 PREPARATION OF BIDS

- 1.1 Bids must be on Bid Forms furnished with this Invitation to Bid. They must be submitted in a sealed envelope marked with your company name and “**BID #, DATE, Commodity Processing- and the name of the item**” clearly marked on the outside of the envelope.
- 1.2 Bidders are instructed to carefully read all terms, conditions and specifications as set forth in the Invitation to Bid. Bid forms must be completed in their entirety. Responses must be either typed or written in ink. Any correction made on the bid form (white out or strike through) must be initialed by an authorized representative of the company submitting the bid or the bid may be rejected by FCSS. Each bidder is required to furnish all information requested in the Invitation to Bid.
- 1.3 Each bidder is responsible for having knowledge and understanding of any applicable State of Georgia Code and FCSS regulations or policies pertaining to FCSS procurement.
- 1.4 FCSS Purchasing Regulations are hereby acknowledged understood and agreed to by both parties and are hereby fully incorporated into the Bid and Bid Contract.
- 1.5 **Conditional Bids-** Bids that in any way qualify or vary the terms and conditions and specifications of this Bid may be considered non-responsive and disqualified from consideration of award.

2.0 COMMUNICATIONS WITH FCSS STAFF

- 2.1 All communications concerning this BID must be submitted **in writing** to the FCSS Purchasing Department. Email to **lgilder@forsyth.k12.ga.us** is the preferred method of communication. Only written questions submitted via email or fax will be accepted. No response other than written, distributed by the Food & Nutrition Services Department will be binding upon FCSS. User departments may be called upon for clarification in their area of expertise at the discretion of the Purchasing Department. **Questions must be received by 4:00 PM, April 21, 2022**
- 2.2 From the issue date of this BID until the completion of the selection process and the award notification is announced, bidders are not allowed to communicate with school system employees and/or contracted agents related to this BID for any reason except as authorized by the Purchasing Department. Violation of this provision may result in rejection of the bidder’s response.
- 2.3 It is the vendor’s responsibility to check the FCSS Current Solicitations website for any addenda, responses to vendor questions, or other communications, which may be necessary during the solicitation period.

3.0 SUBMISSION OF BIDS

- 3.1 The **Original and One Copy of the Bid** must be received at the Forsyth County School System, Attention: School Nutrition Department, 136 Almon C. Hill Drive, Cumming, Ga. 30040 no later than the date and time (determined by the date/time stamp of the FCSS) set forth in the Invitation to Bid.

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- 3.2 The bids will be publicly opened and read at the time and place set forth in the Invitation to Bid.
- 3.3 **Any bid received after the designated time will be deemed late and will not be considered by the FCSS.** Telephone or fax quotations in lieu of Bid Form will not be accepted. FCSS cannot be responsible for lateness of receipt due to delivery delays.
- 3.4 Verify your quotation before submission as it cannot be withdrawn, corrected, or altered after submission. A responsible officer or employee must sign and all obligations assumed by such signature must be fulfilled.

4.0 SPECIFICATIONS

- 4.1 Any deviation from the specifications must be clearly identified in a letter accompanying the bid. The furnishing of cuts, catalogs or printed descriptions will not relieve the bidder of this requirement. FCSS shall determine in its sole discretion whether substitutions or modifications of the requested specifications are comparable to those contained within the Invitation to Bid. If FCSS determines that the modifications or deviations from the specifications are not in compliance, the bid may be rejected.
- 4.2 A vendor's failure to deliver any items/services according to specifications set forth in their bid may result in cancellation of the purchase and permanent removal from the vendor's list. If any items do not meet these specifications, the items will be picked up at vendor's expense and removed from FCSS property at the sole cost of the vendor.
- 4.3 For Goods: Manufacturers listed, as "Model Equivalence" in the Invitation to Bid is to establish the general quality required. Items of other manufacturers of equal or better specifications may be considered. The FCSS will be the sole determiner as to whether the substituted item is of equal or better specification.
- 4.4 If an awarded brand/model is discontinued during the award period, the awarded vendor may offer a replacement item. The replacement brand/model must meet or exceed minimum specifications listed in Bid document as well as current industry standards. Replacement units must be made available to FCSS for review and approved prior to the end of life of the awarded model. FCSS reserves the right to accept or reject the replacement item.
- 4.5 All products and materials furnished must comply with all applicable federal, state, and local laws, codes and regulations.

5.0 PRICES QUOTED

- 5.1 Prices must remain firm for a period of one year from the award date unless specified otherwise in the Special Terms and Conditions. The Forsyth County School System reserves the option to renew the bid annually if agreeable to both the successful bidder and the Forsyth County School System. Bid may be renewed up to four (4) times annually.
- 5.2 Quantities/amounts shown on the Invitation to Bid are estimates. Bidders are advised that the actual number purchased/required may vary from those on the Invitation to Bid, depending upon the needs of the FCSS and the availability of funds.
- 5.3 Bids that contain minimum order amounts will not be accepted unless called for in the Special Terms and Conditions.

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5.4 Pricing must be submitted on Bid Form as requested without conditions unless called for in Special Terms & Conditions.

5.5 **For Goods:** Bids must include all delivery and/or installation charges. Delivery and/or installation requirements will be as specified in the Special Terms and Conditions.

6.0 SAMPLES

6.1 When required, samples must be furnished at the bidder's expense.

6.2 Samples are to be tagged or labeled as directed in the Special Terms and Conditions.

6.3 Samples not used or destroyed in testing will be returned to the bidder at bidder's request and at bidder's expense. If vendor does not arrange for pick-up of samples as defined in Special Terms & Conditions, samples will become the property of FCSS.

7.0 AWARDS

7.1 The FCSS reserves the right to accept or reject any part of a submitted bid (in whole or in part), to accept the entire bid from one bidder, to accept portions of the bid from several bidders, or to reject any and/or all bids submitted or waive any minor irregularity.

7.2 The FCSS reserves the right to award by line item, to more than one vendor, and/or to award by group or any combination thereof.

7.3 Award will be made to the lowest responsive and responsible bidder meeting all specifications and requirements. This is the bidder who submits the lowest price, whose bid meets the specifications, terms, conditions set forth in the Invitation to Bid, and who is clearly capable of delivering the product or services specified. The lowest responsible bidder will not, therefore, always be the bidder who has submitted the lowest monetary bid. Award of bids will be made in the best interest of FCSS at its sole discretion.

7.4 Purchases by the FCSS are not subject to Federal Excise Tax or State and Local Sales Tax. No taxes should be included in this Bid.

8.0 CONTRACT

8.1 **THE CONTRACT AGREEMENT MUST BE COMPLETED BY THE BIDDER AND RETURNED WITH THIS BID IN ITS ENTIRETY.**

8.2 It is understood and expressly agreed that, upon proper acceptance of any or all items by the Purchasing Department, a contract shall hereby be created.

8.3 Failure to observe any of the general or special terms of this contract may constitute for rejection of award and removal from bidders list.

8.4 Unless otherwise stated in the Special Terms and Condition, FCSS requires that all prices quoted will be firm for 12 months from award of contract.

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- 8.5** By signing of contract, vendor confirms responsibility as an authorized agent to sell, distribute all products and services as bid. In addition, vendor confirms ability and responsibility to provide all manufacturer warranties for the items proposed. This includes additional warranty items that may be included in the Special T&C.
- 8.6** **Authority-** Each party warrants that such party has full power and authority to enter into and perform this contract. The person signing on behalf of each party represents that person as duly authorized to enter into this contract on behalf of such party.
- 8.7** **Choice of Law and Venue-**The Laws of the State of Georgia shall govern this contract in all respects. Any lawsuit or other action based on claims arising from this contract shall be brought in a court or other forum of competent jurisdiction in Forsyth County, Georgia.
- 8.8** **Entirety of Contract-** All documents submitted in response to the BID, including any attachments and appendices are incorporated into the contract between FCSS and the Vendor and contain the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties with respect to the subject matter hereof. If any language of the Bid Response by the Vendor conflicts with the language of the Bid, the language of the Bid shall govern and control for all purposes, unless consented and agreed to by FCSS in writing.
- 8.9** FCSS reserves the right to review and accept or deny requests for price changes due to extenuating circumstances in the economy, marketplace or acts of God. This option will only be exercised if it is deemed in the best interest of the FCSS.

9.0 SHIPPING

- 9.1** All prices are to include delivery to the location(s) specified in the Invitation to Bid or the Purchase Order. All delivery for goods must be FOB destination, unless specified otherwise in the Special Terms and Conditions, with delivery to the location specified by the FCSS.
- 9.2** In the event of damage, shortage, or other loss resulting from shipment to any FCSS facility by common carrier, any claim for such damage, shortage, or other loss shall be a matter between vendor and the carrier.
- 9.3** FCSS reserves the right to cancel the purchase of the bid items/services and/or any other pending purchase orders to the same vendor and/or permanently remove the vendor from the vendor list if the items/services have not been delivered/completed by the specified delivery date and no written extension of such delivery date has been granted by FCSS.

10.0 INVOICING

- 10.1** Payment will be made by the FCSS after final delivery and acceptance of all items/services. However, final acceptance will not be made until after inspection and approval by the FCSS authorized representative.
- 10.2** All accounts are paid on a current basis. Best effort will be made by FCSS to take any discounts offered; however, cash discounts will not factor into price consideration for award of contract. Time will be computed from delivery (date of FCSS signature) at destination or from the date a correct invoice is received, if later than the date of delivery.

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10.3 Invoicing Procedure- Invoices must be original. Copies or facsimiles are not acceptable. Invoices must not be altered in any way from the original by handwriting or by machine. Invoices will be paid within 30 days of receipt of invoice and within 30 days of notification receipt of goods or services by receipt. Computer-produced invoices are preferred. Invoices must contain the company name, the remit to address, and FCSS purchase order number.

11.0 ASSIGNMENT, DELEGATION, OR SUBCONTRACT

11.1 Except as may be specifically permitted by the Bid, Vendor shall not delegate, subcontract, assign, or otherwise permit anyone other than the Vendor personnel to perform any of the work required under this Contract, or assign any of its rights or obligations hereunder, without written consent of FCSS, which consent may be withheld at its sole discretion.

12.0 INDEMNIFICATION

12.1 The successful Vendor shall be liable for any injury, damage or loss occasioned by negligence of the successful Vendor, its agents, or any other person the successful Vendor has designated to visit FCSS property and shall indemnify and hold harmless the Board, its officers, employees, agents, volunteers from any liability arising in the performance of this contract. Vendor's obligation under this section shall not extend to any liability caused by the sole negligence of the FCSS, or its employees.

13.0 TERMINATION

13.1 Termination-If FCSS or the successful vendor(s) wish to cancel this contract, written notice thirty (30) days in advance will be required of either party. In addition, either party may terminate the contract in the event the other party breaches any of its duties and obligations under this contract and fails to cure such breach within thirty (30) days after receiving notice specifying the breach. FCSS reserves the right to terminate without warning in the event of critical and/or material breach of contract.

14.0 ADDENDUM

14.1 Addendum(s) issued in writing during the time of solicitation will be incorporated in the subsequent contract. Vendor is responsible for checking the web page frequently during solicitation period for any potential addendum.

15.0 FNS GENERAL TERMS AND CONDITIONS and FNS SPECIAL TERMS AND CONDITIONS

The above boilerplate is the basic General Terms and Conditions required to contract with FCS. The Terms and Conditions cited below are specific to Food and Nutrition services as they comply with all relevant Federal and State Law pertaining to the purchase of food products. **Should the General Terms and Conditions be in conflict with the attached FNS General or FNS Special Terms and Conditions, the later will govern.**

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Food & Nutrition Services

FNS GENERAL TERMS AND CONDITIONS

1.0 PURPOSE

- 1.1 The purpose of this solicitation is to award a contract(s) for the purchase of Food and Beverage Products for all FCS schools in accordance with all applicable Federal, State, and Local laws and in accordance with the terms and conditions of this solicitation and FCS Purchasing Policy.

2.0 GENERAL BID/CONTRACT CONDITIONS

- 2.1 **Debarment and suspension verification (\$25K+) Debarred, Suspended, Ineligible Status:** Institutions shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors and/or principals only. The serious nature of debarment and suspension requires that sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Institutions shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4.

By signing this agreement, the bidder is testifying that they are not debarred, suspended or have any ineligible or voluntary exclusions with the U.S. Department of Agriculture or any other Federal or State Agency. All responses will be verified.

Contractor certifies that the Contractor and/or any of its subcontractors or principals have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or any agency of the Federal government or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the School Food Authority if Contractor is debarred or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

- 2.2 **Economic Price Adjustment:** All prices offered shall be firm against any increase for **six months** from the effective date of the contract. A minimum 15 days prior to adjustment period, FCS may entertain a request for escalation in accordance with the most recently published **CPI Index** CWUR0000SAf (or applicable as determined by FCS). Each successive option will be treated in the same manner. FCS reserves the right to accept, reject, or negotiate the request for a price increase. If the price increase is approved, the price will remain firm for the remainder of the fixed price period. This clause also enables FCS to seek de-escalation on the same terms.
- 2.3 **Contract Renewal.** FCS shall have the option, in its sole discretion, to renew the Contract for additional renewals as defined in the Standard Contract (up to four annual) on a year-to-year basis by giving the Contractor written notice of the renewal decision at least (30) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the SFA, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a written notice or Notice of Award Amendment. Contract will not auto-renew without effective action by FCS.
- 2.4 **Contract Extension.** In the event that this Standard Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified goods and services, the SFA may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the SFA a continuous supply of the identified goods and services.
- 2.5 **Buy American Act - 7 CFR 210.21-** Contractor must comply with Buy American Act which states that a school food authority purchase, to the maximum extent practicable, domestic commodities or products. *Buy American (1) Definition of domestic commodity or product.* In this paragraph (d), the term 'domestic

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commodity or product' means—(i) An agricultural commodity that is produced in the United States; and (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the US.

2.6 Non-Performance or/and Termination Clauses

- a. Immediate Termination.** This Contract will terminate immediately and absolutely if the School Food Authority determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the School Food Authority cannot fulfill its obligations under the Contract, which determination is at the School Food Authority's sole discretion and shall be conclusive. Further, the School Food Authority may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - i.** In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - ii.** The School Food Authority determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized
 - iii.** The Contractor fails to comply with confidentiality laws or provisions; and/or
 - iv.** The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
- b. Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the School Food Authority to declare the Contractor in default of its obligations under the Contract:
 - i.** The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the School Food Authority's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
 - ii.** The School Food Authority determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
 - iii.** The Contractor fails to make substantial and timely progress toward performance of the Contract;
 - iv.** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or State law to the extent allowed by applicable federal or county or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the School Food Authority reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - v.** The Contractor has failed to comply with applicable Federal, State, Local laws, rules, ordinances, FCS regulations and orders when performing within the scope of the Contract;
 - vi.** The Contractor has engaged in conduct that has or may expose FCS to liability, as determined in the School Food Authority's sole discretion; or
 - vii.** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of FCS, or a third party.
- c. Notice of Default.** If there is a default event caused by the Contractor, the School Food Authority shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the School Food Authority's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice the School Food Authority may:
 - i.** Immediately terminate the Contract without additional written notice; and/or

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- ii Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- iii. Enforce the terms of the Contract and seek any legal or equitable remedies.
- d. **Termination Upon Notice.** Following thirty (30) days' written notice, the School Food Authority may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to the School Food Authority up to and including the date of termination.
- e. **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the School Food Authority, the School Food Authority shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the School Food Authority is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the School Food Authority under the Contract in the event of termination. The School Food Authority shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.
- f. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the School Food Authority, the Contractor shall:
 - i. Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting from, and any other matters the School Food Authority may require;
 - ii. Immediately cease using and return to the School Food Authority, any personal property or materials, whether tangible or intangible, provided by the School Food Authority to the Contractor;
 - iii. Comply with the School Food Authority's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - iv. Cooperate in good faith with the School Food Authority, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
 - v. Immediately return to the School Food Authority any payments made by the School Food Authority for goods and services that were not delivered or rendered by the Contractor.

2.7 **Clean Air Act-CFR7- 3016.36(i)12**

All vendors must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C 1857(h), section 508 of the Clean Water Act (33 U.S.C 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR part 18) if contract is in excess of \$100,000.

2.8 **Civil Rights Statement**

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age and disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

2.9 **Record Retention-CFR7- 3016.36 (i)11**

The vendor must retain all books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate

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all charges billed to FCS throughout the term of the Contract for a period of at least Five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

The Contractor shall permit the Auditor of the Forsyth County Board of Education or any authorized representative of the School Food Authority, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of Federal or State government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours.

The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the Forsyth County Board of Education reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

2.10 Equal Employment Opportunity Compliance Statement (\$10K+)

In accordance with Federal Law and U.S. Dept of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

2.11 Energy Efficiency-CFR7- 3016.36(e)

All vendors must comply with the 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 (Pub L, 94-163, 89 Stat 871).

2.12 Potential Small Business, Minority, and Women's Business Enterprise-CFR7- 3016.36 - e

It is the intent of FCS to provide maximum practicable opportunities in its solicitations to small businesses, minority firms, women's enterprises and labor surplus area firms.

2.13 Non Collusion

The bidder, by affixing its signature to this solicitation, certifies "that that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respect fair and without collusion or fraud. I understand that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, and certify that I am authorized to sign this bid for the bidder. (O.C.G.A. 50-5-67). I further certify that the provisions of the official code of Georgia annotated 45-10-20 et seq. have not and will not be violated in any respect."

2.14 Contractor must comply with USDA Federal Regulations regarding procurement for Child Nutrition Programs - 7 CFR Part 3015 to CFR Parts 3016 and 3019

2.15 Protest Procedures

Any protests arising from this solicitation and award shall be made in writing and shall be delivered to the Superintendent as the acting protest official of the Forsyth County Board of Education at 1120 Dahlonga Hwy, GA 30040. The protest shall be filed no later than ten (10) days from the award notice and shall include:

- The name, address, and telephone number of the protester;
- The signature of the protester or an authorized representative of the protester;
- Identification of the purchasing agency and the solicitation or contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
- The form of relief requested.

A written response to the protest will be made within 30 days from receipt of the protest and all items indicated above.

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2.16 Notice and Assistance Regarding Patent and Copyright Infringement 48 CFR-Chapter 1-Subchapter H- Part 52.227-2

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the

Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the

Government except where the Contractor has agreed to indemnify the Government.

52.227-3 Patent Indemnity.

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under [35 U.S.C. 181](#)) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without

2.17 Lobbying (over 100K) - CFR 7.3018

All applicable Solicitations must include both Certification and Disclosure Statements that are attached to this solicitation. Bidder responsible for obtaining and submitting forms as specified.