

Standard Terms and Conditions for Purchase Orders for Printing Procurement

By submitting a response to a limited solicitation or acceptance of a purchase order, the bidder agrees to acceptance of the following Standard Terms and Conditions for Purchase Orders for Printing Procurement.

Definitions used in this document:

"Bidder" means a person that has submitted a bid in response to an invitation for bid, limited solicitation, or direct purchase.

"Contract" means all types of state agreements, including purchase orders, for the procurement of supplies or services.

"Contractor" means a person having a contract with the State of Montana.

ACCEPTANCE/REJECTION OF BIDS: The State reserves the right to accept or reject any or all bids, wholly or in part, and to make awards in any manner deemed in the State's best interest. Bids will be firm for 30 days, unless stated otherwise in the text of the invitation for bid or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance ([18-1-118](#), MCA). The Contractor shall create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or a third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a bidder's response, the language contained in the State's original solicitation document prevails. Intentional manipulation and/or alteration of solicitation document language will result in the bidder's disqualification and possible debarment.

ASSIGNMENT, TRANSFER, AND SUBCONTRACTING: This project must be produced by the Contractor and cannot be brokered to a subcontractor without prior written approval from the State. Bid submissions must clearly identify the specific work to be subcontracted. The State reserves the right to disallow the use of a subcontracted printer if it is determined to be in the State's best interest. The Contractor is responsible to the State for the acts and omissions of all subcontractors and the subcontractor's employees, representatives, and contractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationship exists between any subcontractor and the State under this contract ([18-4-141](#), MCA).

AUTHORITY: The attached limited solicitation, invitation for bid, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Equal Pay Act of 1963, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees, and taxes under the Patient Protection and Affordable Care Act (P.L. 111-148, 124 Stat. 119). Any subletting or subcontracting by the Contractor subjects subcontractors to the same provisions. In accordance with [49-3-207](#), MCA, the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent from the State's Print and Mail Services Procurement Officer. Printing projects provided to the State that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

CONSIDERATION/PAYMENT:

A. Payment Terms and Methods. All payment terms will be computed from the date of delivery of the printing project OR receipt of a properly executed invoice, whichever is later. The State is allowed 30 days to pay such invoices. The State will either use a purchasing card to pay for this printing project or the Contractor will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

B. Invoicing. The Contractor shall provide a detailed line item invoice, including the contract number, for all printing jobs. Invoices received by the State that lack any of the information detailed above will result in payment delays and may be returned to the Contractor for correction and resubmission.

C. Overruns/Underruns. All overruns are limited to three percent. There is no allowance for underruns.

D. Additional Charges. The State will not accept or pay any additional charges without the Contractor's itemized notification and approval prior to production by the State's Print and Mail Services Procurement Officer.

E. Assessed Damages for Late Delivery. The State of Montana reserves the right to assess damages of one-half of one percent per day on the amount of the contract price for failure to make delivery within the time indicated on the contract. This sum will be deducted from the Contractor's payment. No amount will be awarded to the Contractor for completion in advance of the time specified under the Contract. The Contractor acknowledges that this assessment is reasonable and that the Contractor has had an opportunity to negotiate the amount.

F. Tax Exemption. The State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as provided in the federal Patient Protection and Affordable Care Act.

G. U.S. Funds. All prices and payments must be in U.S. dollars.

CONTRACT TERMINATION: The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract. In addition, the State may, by written notice to the Contractor, terminate this contract without cause and without incurring liability to the Contractor. The State shall give notice of termination to the Contractor at least 30 days before the effective date of termination. The State shall pay the Contractor only that amount, or prorated portion thereof, owed to the Contractor up to the date the State's termination takes effect. This is the Contractor's sole remedy. The State shall not be liable to the Contractor for any other payments or damages arising from the termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

COST DISCLOSURE STATEMENT: Montana law requires that printed documents display a "cost disclosure" statement on most public documents. This statement must be printed on the exterior cover of the publication. Specific instructions will be provided by the State if this statement is required for this printing project ([18-7-306](#), MCA).

DEBARMENT: The bidder certifies by submitting this bid that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the bidder cannot certify this statement, attach a written explanation for review by the State.

FACSIMILE RESPONSES: Facsimile responses will be accepted for limited solicitations or invitations for bids ONLY if they are completely received by the State prior to the time set for receipt. Bids, or portions thereof, received after the specified time will not be considered.

FAILURE TO HONOR BID: If a bidder to whom a contract is awarded refuses to accept the award or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder for a period of time from entering into any contracts with the State of Montana.

FILE TRANSFER, FORMAT, PROOFS, AND OWNERSHIP: The State shall electronically transmit all necessary files generated under this contract to the Contractor using the State's file transfer service. Contractor is liable for all damage or loss to artwork or agency-provided materials while in its possession or control. The State will specify in the contract how proofs will be exchanged. All files and materials that the State provided to Contractor remain State property and no unauthorized use is permitted. The Contractor shall be required to return all files and materials to a designated location.

FORCE MAJEURE: Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation need not be performed because of the condition.

HOLD HARMLESS/INDEMNIFICATION: The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

LATE BIDS: Regardless of cause, late bids will not be accepted and will automatically be disqualified from further consideration. It shall be solely the bidder's risk to ensure delivery at the designated office by the designated time. Late bids will not be opened and may be returned to the bidder at the expense of the bidder or destroyed if requested.

PATENT AND COPYRIGHT PROTECTION: If a third party makes a claim against the State that the original graphics created by the Contractor under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. The Contractor shall defend such claim in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a bidder submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies and then only if federal funds are not involved. For a list of states that grant resident preference, see: <http://sfsd.mt.gov/SPB/Preferences>.

REDUCTION OF FUNDING: The State must, by law, terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period ([18-4-313](#)(4), MCA).

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with [35-1-1026](#) and [35-8-1001](#), MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If a business is determine that it is transacting business in Montana, it must register with the Secretary of State and obtain a certificate of authority to demonstrate that it is in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at: <http://sos.mt.gov>.

SAMPLES: Paper samples, printed samples, and/or final product copies may be required throughout the print procurement process. When required, the samples and/or copies must be received by the specified time at: Procurement Officer, State Print & Mail, 1698 A Street, PO Box 200132, Helena, MT 59620-0132.

SEVERABILITY: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

UNION LABEL OR AFFIDAVIT REQUIREMENT: Montana law requires that all printing that is chargeable to the State must bear either a union label or that an affidavit be on file with the Montana Secretary of State's Office attesting that the print shop's employees are receiving the "prevailing wage rate and work under conditions prevalent in the locality in which the work is produced." Vendors can obtain a copy of the Public Printers Affidavit at: <http://vendorresources.mt.gov/Vendor Forms>. ([18-7-104](#), MCA)

VENUE: Montana law governs this contract. The parties agree that any litigation concerning this bid or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees ([18-1-401](#), MCA).

WAIVER OF BREACH: Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

WORKMANSHIP: First class workmanship is required. Proofs must accurately represent content, color and overall appearance as the project would appear on press; print productions requires hairline registration, accurate color consistency and alignment of pages; bindery work requires consistent and accurate folds, assembly, stitching and trimming. Any produced/printed projects not meeting high-quality standards for registration and consistent ink saturation shall be rejected and Contractor will be required to replace the rejected printing within five calendar days on notice at no cost to the State. The ordering agency shall be the final judge of quality.