



## **PURCHASE ORDERS**

Following are the standard terms and conditions that apply to contracts entered into with Workforce Solutions Borderplex, unless otherwise noted on a Purchase Order or within the Terms and Conditions section of a Contract.

### **1. INVOICES & PAYMENTS**

- a. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- b. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
- c. Invoices will reflect the Contract Number (where applicable) and the Purchase Order Number.
- d. Do not include State Tax. Workforce Solutions will furnish a tax exemption certificate upon request.
- e. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- f. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- g. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- h. Mail invoices to the Department indicated in the Invoice Instructions set forth on the Purchase Order.
- i. Contractor shall advise the Comptroller of any changes in its remittance addresses.

### **2. CONTRACTUAL RELATIONSHIP**

Nothing herein will be construed as creating the relationship of employer and employee between Workforce Solutions Borderplex and the Contractor or between Workforce Solutions Borderplex and the Contractor's employees. Workforce Solutions Borderplex will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of Workforce Solutions Borderplex. Neither the Contractor nor his employees will be entitled to any of the benefits established for Workforce Solutions Borderplex employees, nor be covered by Workforce Solutions Borderplex's Workers' Compensation Program.

### **3. INDEMNIFICATION**

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD Workforce Solutions Borderplex, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF



SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Without modifying the conditions of preserving, asserting or enforcing any legal liability against Workforce Solutions Borderplex as required by any law, Workforce Solutions Borderplex will promptly forward to Contractor every demand, notice, summons or other process received by Workforce Solutions Borderplex in any claim or legal proceeding contemplated herein.

### **Contractor will**

- 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages;
- 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and
- 3) defend or cause to be defended on behalf of Workforce Solutions Borderplex all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

Contractor will pay all judgments finally establishing liability of Workforce Solutions Borderplex in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by Workforce Solutions Borderplex including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. Workforce Solutions Borderplex, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. Workforce Solutions Borderplex will not be responsible for any loss of or damage to the Contractor's property from any cause.

### **4. GRATUITIES**

Workforce Solutions Borderplex may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by Workforce Solutions Borderplex that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Workforce Solutions Borderplex with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by Workforce Solutions Borderplex pursuant to this provision, Workforce Solutions Borderplex shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

### **5. WARRANTY-PRICE**

A. The price to be paid by Workforce Solutions Borderplex will be that contained in the Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, Workforce Solutions Borderplex



may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

B. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty Workforce Solutions Borderplex will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

## **6. RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

## **7. TERMINATION**

### **A. Termination for Convenience:**

The Workforce Solutions Borderplex may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the Workforce Solutions Borderplex to be paid the Contractor. If the Contractor has any property in its possession belonging to Workforce Solutions Borderplex of El Paso, the Contractor will account for the same, and dispose of it in the manner Workforce Solutions Borderplex of El Paso directs.

### **B. Termination for Default:**

If the Contractor fails to comply with any provision of the contract the Workforce Solutions Borderplex may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. Workforce Solutions Borderplex shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

## **8. ADDITIONAL REMEDIES**

If Workforce Solutions Borderplex terminates the contract because the Contractor fails to deliver goods as required by the contract, Workforce Solutions Borderplex shall have all of the remedies available to a buyer pursuant to the UNIFORM COMMERCIAL CODE including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal



or formal procurement procedures as required by policy. Workforce Solutions Borderplex may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

## **9. TERMINATION FOR DEFAULT BY WORKFORCE SOLUTIONS BORDERPLEX**

If Workforce Solutions Borderplex fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Sr. Purchasing Agent describing the default, specifying the provisions of the contract under which the Contractor considers Workforce Solutions Borderplex to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If Workforce Solutions Borderplex fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

## **10. FORCE MAJEURE**

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

## **11. ASSIGNMENT-DELEGATION**



No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of Workforce Solutions Borderplex. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

## **12. WAIVER**

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

## **13. INTERPRETATION-PAROL EVIDENCE**

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

## **14. APPLICABLE LAW**

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or Workforce Solutions Borderplex Charter or any ordinance of the Workforce Solutions Borderplex.

## **15. ADVERTISING**

Contractor will not advertise or publish, without Workforce Solutions Borderplex's prior consent, the fact that Workforce Solutions Borderplex has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

## **16. AVAILABILITY OF FUNDS**

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by Workforce Solutions Borderplex.

## **17. VENUE**

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

## **18. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION**



If the Sr. Purchasing Agent determines that Contractor's default constitutes an immediate threat to the health or safety of Workforce Solutions employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, Workforce Solutions Borderplex shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures.

Workforce Solutions Borderplex may recover the difference between the cost of substitute services and the contract price from Contractor as damages. Workforce Solutions Borderplex may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of Workforce Solutions Borderplex to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

#### **19. COMPREHENSIVE GENERAL LIABILITY INSURANCE**

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

\$1,000,000.00 – Per Occurrence

\$1,000,000.00 – General Aggregate

\$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the Workforce Solutions Borderplex and its officers and employees shall be named as additional insured as their interests may appear. Workforce Solutions Borderplex shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change.

Workforce Solutions Borderplex shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

Workforce Solutions Borderplex  
Purchasing & Contracts Department  
300 E. Main  
Ste. 800  
El Paso, Texas 79901

Please refer to Bid Number/Contract Number and Title in all correspondence. Failure to submit insurance certification may result in contract cancellation.



## **20. WORKERS' COMPENSATION**

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: \$500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

## **21. COMPLIANCE WITH NON-DISCRIMINATION LAWS**

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the Workforce Solutions Borderplex in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

## **22. RIGHT TO AUDIT**

The Contractor agrees that Workforce Solutions Borderplex shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that Workforce Solutions Borderplex shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. Workforce Solutions Borderplex shall give Contractor reasonable advance notice of intended audits. Workforce Solutions Borderplex will pay Contractor for reasonable costs of any copying Workforce Solutions Borderplex performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to Workforce Solutions Borderplex any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

## **24. SHIPMENT UNDER RESERVATION PROHIBITED**

The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

## **25. DELIVERY TERMS AND TRANSPORTATION CHARGES**

F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; Workforce Solutions Borderplex agrees to reimburse the Contractor for transportation costs



in the amount specified in the Contractor's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Workforce Solutions Borderplex will have the right to designate what method of transportation will be used to ship the goods.

## **26. TITLE & RISK OF LOSS**

The title and risk of loss of the goods will not pass to Workforce Solutions Borderplex until Workforce Solutions Borderplex actually receives and takes possession of the goods at the point or points of delivery.

## **27. RIGHT OF INSPECTION**

Workforce Solutions Borderplex will have the right to inspect the goods at delivery before accepting them.

## **28. NO REPLACEMENT OF DEFECTIVE TENDER**

Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Contractor may reasonably notify Workforce Solutions Borderplex of his intention to cure and may then make a conforming tender within the contract time but not afterward.

## **29. PLACE OF DELIVERY**

The place of delivery will be that set forth in the solicitation. The terms of this contract are "no arrival, no sale."

## **30. WARRANTY-PRODUCT**

The Contractor will not limit or exclude any implied warranties and any attempt to do so will render this contract voidable at the option of Workforce Solutions Borderplex. Contractor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Contractor, if any. In case of a conflict between the specifications, drawings and descriptions, the drawings and descriptions will govern.

## **31. SAFETY WARRANTY**

Contractor warrants that the product sold to Workforce Solutions Borderplex will conform to the standards promulgated by the US Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Workforce Solutions Borderplex may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by Workforce Solutions Borderplex will be at the Contractor's expense.

## **32. REPORTING, RECORD RETENTION and ACCESS**





1. Access to Records:

The Contractor agrees to provide Borderplex or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

2. Maintenance of Records:

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Borderplex or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

### **33. DEBARRED**

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Borderplex whether or not it, or any or its subcontractors or agents, is or has been on any debarred bidders' list maintained by the United States government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform the Borderplex.

The Contractor hereby certifies that it and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any of the covered transactions by any Federal Department or agency.

### **34. TERMINATION OF GRANT**

Should this Agreement be terminated as a result of cancellation of federal funding covering this Project, the Borderplex will promptly notify the Contractor of the cancellation by certified mail-return receipt requested, whereupon the Contractor shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder.

In such an event, the Contractor will be paid for professional services performed to said date upon furnishing the Borderplex a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

### **35. PROTEST PROCEDURES**

In the event that a bidder or Proposer desires to protest the procurement (bid or proposal) or an award, the following procedures must be followed:

1. General

Any protest must be submitted in writing. A fax is allowable as long as a formal written document with original signatures is also submitted. The outside of the transmittal envelope must be clearly marked "PROTEST". All protests shall clearly state the name of the protester, the solicitation, bid or contract title and number. The protest must be fully supported by technical data or other pertinent information that will delineate why the protest is being lodged. Protests filed after the deadline shall be dismissed.

The Workforce Solutions Borderplex's objective is to resolve all formal protests as soon as practical. Nothing in this procedure should be construed as requiring a formal protest if a



vendor wishes to clarify or discuss standards or procedures relating to the procurement process.

#### 1.1 Submission for Protest of Procurement

Any protest of the procurement must be submitted in writing to Workforce Solutions Borderplex Procurement Representative and received no later than five (5) working days before the scheduled closing date for receipt of proposals or bids.

This includes protests based upon:

- Restrictive or exclusionary specifications,
- Challenges to the bid or proposal specifications,
- Evaluation procedures,
- Terms and conditions of the solicitation package.

#### 1.2 Submission for Protest of Award

Any protest of the award must be submitted in writing to Workforce Solutions Borderplex Procurement Representative received by no later than five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the Workforce Solutions Borderplex) after receipt of notice of the award.

#### 1.3 Response

Workforce Solutions Borderplex Procurement Representative shall respond to the protest within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the Workforce Solutions Borderplex) from the receipt date of the written protest.

Options – Workforce Solutions Borderplex Procurement Representative has the option to:

- Extend the time provided for each step of the protest procedure,
- Postpone the bid or proposal opening,
- Extend the date of notice of award, or
- Postpone the award of contract if deemed appropriate for protest resolution.

All active parties will be notified in writing if an option is elected.

## 2. Appeal of Determination

If Workforce Solutions Borderplex Procurement Representative's response is not satisfactory, the protester may appeal in writing to Workforce Solutions Borderplex CEO within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the Workforce Solutions Borderplex) from the date of receipt of the Procurement Representative's response. The CEO will respond in writing within ten (10) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the Workforce Solutions Borderplex) from the date of receipt of appeal.

The decision rendered by Workforce Solutions Borderplex Manager shall be the final decision of the Workforce Solutions Borderplex.