

TOWN OF PROSPER
STANDARD TERMS & CONDITIONS FOR PROCUREMENTS
Revised April 24, 2020

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Prosper ("Town"), unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Prosper advertises formal procurement opportunities through www.prospertx.gov, www.ionwave.net and *The Prosper Press*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of one or more addenda. The sole issuing authority shall be vested in the Town of Prosper Purchasing Office. If addenda containing material changes to the specifications or pricing form are issued, the respondent shall acknowledge receipt of such addenda in the designated section in the Bid/Proposal document. It is the responsibility of the bidder/proposer to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of any addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or the apparent omission from these specifications of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Prosper reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Prosper utilizes Ion Wave to advertise and receive bids and proposals electronically over the Internet. Electronic submissions through Ion Wave shall be electronically signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents should clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Prosper and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Prosper Purchasing Office, 250 W. First Street, Prosper, Texas 75078, prior to the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Prosper Purchasing Office serves as the official time clock. Submissions received in the Purchasing Office after the stated deadline shall be refused.

and returned unopened. The Town of Prosper is not responsible for issues encountered with methods of delivery.

10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure of a unit price or extended price made prior to bid/proposal opening shall be initiated by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting an error in bid price after bid opening.

11. **TAXES:** The Town of Prosper is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Prosper upon request. A request for a Tax Exempt Form can be submitted in writing to jcook@prospertx.gov or by contacting the Purchasing Office at 972.569.1018.

12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal without written approval of the Purchasing Manager.

13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Prosper, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.

14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Prosper will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.

15. **TESTING:** At the Town of Prosper's discretion, testing may be required prior to award of the bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.

16. **SAMPLES:** At the Town of Prosper's discretion, samples may be required prior to award of the bid/proposal or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.

17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is merely descriptive and **not** restrictive, and is intended to indicate the type and minimum quality level desired for comparison purposes, unless otherwise stated herein to the contrary. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.

18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Prosper's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive. Neither shall such reading be construed as a comment on the responsibility of the bidder/proposer.

The Town of Prosper will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Prosper's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town

will notify the successful respondent upon award of the contract; and, according to State law all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.

19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to jcook@prospertx.gov. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the laws, Town Charter, and Town Code of Ethics regarding conflicts of interest. No officer, employee or agent of the Town of Prosper shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 1.10 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined therein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident bidder/proposer unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder/proposer on a bid/proposal for goods and services in the non-resident bidder's state.
23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Prosper for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Prosper may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have a satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics; and
 - E. Be otherwise qualified and eligible to receive an award.
25. **AWARD OF CONTRACT:** The Town of Prosper reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria

will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services; and/or
 - G. Any relevant criteria specifically listed herein.
26. **ACCEPTANCE**: Respondent agrees that acceptance of any or all items by the Town of Prosper, Texas, within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD**: Unless otherwise stated in the specifications contained herein, the contract period for this bid/proposal will be for one (1) year upon Town approval, with four (4) optional one-year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING**: The Town of Prosper is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available in a subsequent fiscal year.
29. **ASSIGNMENT**: The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, to any other person or party without the prior written consent of the Town obtained through the Town's Purchasing Office.
30. **INTERLOCAL AGREEMENT**: The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or may hereafter enter into, interlocal cooperative purchasing agreements with the Town of Prosper.
31. **CHANGE ORDER**: The Town of Prosper reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract shall be documented in written form by the Town of Prosper and acknowledged by the contracted vendor. **All change orders and modifications to the contract shall be processed through the Purchasing Office only.**
32. **DELIVERY PROMISE – PENALTIES**: Where indicated, respondents must provide the number of calendar days required to deliver goods or services to the Town of Prosper after receipt of order (ARO). **Do not quote shipping dates.** When a delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if the reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Office to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.

33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Prosper location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs of or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Prosper's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, P.O. Box 307, Prosper, Texas 75078, or electronically to ap@prospertx.gov.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Prosper shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Prosper requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Prosper reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Prosper's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Prosper, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act, omission, or fault of the successful bidder, or of any agent, employee, subcontractor or supplier for which the successful bidder is responsible in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Prosper, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
42. **PATENT RIGHTS:** The bidder/proposer agrees to indemnify and hold harmless the Town of Prosper from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town pursuant to the contract documents.

43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Purchasing Manager within five (5) working days after award.

The protest must include, at a minimum, the name of the protester, bid/proposal number or description of goods or services, and a statement of the grounds for the protest. The Purchasing Manager, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Prosper reserves the right to enforce the performance of the contract in any manner prescribed by law and deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost plus any additional administrative costs incurred by the Town to the defaulting contracted vendor.
45. **REMEDIES:** The successful vendor and the Town of Prosper agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
46. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Collin County, Texas.
47. **"ANTI-ISRAEL BOYCOTT" CONTRACT PROVISION:** In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this bid/proposal on behalf of the company verifies by its signature to this bid/proposal that the company does not boycott Israel and will not boycott Israel during the term of any Contract resulting from this bid/proposal.