



Term Contract

Vendor No. 100189179  
 Contact CRAIG MACKAY  
 Your reference SP-12-0120

THE SHERWIN-WILLIAMS CO  
 1701 CENTERVIEW DR STE 125  
 LITTLE ROCK AR 72211

Contract No. 4600024809  
 Date 06/06/2012

Contact Janet Quattlebaum  
 Telephone 501-324-9319  
 Fax 501-324-9311

Our ref. ST  
 Incoterms FOB  
 DESTINATION

Send Invoice To:  
 AS SPECIFIED ON PURCHASE ORDER

Ship To:

Valid from: 06/11/2012  
 Valid to: 06/10/2017

AWARD NO: SP-12-0120  
 COMMODITY: PAINT, EXTERIOR & INTERIOR

VENDOR CONTACT INFORMATION:  
 Contact Person: Craig Mackay @ 800-723-8766 Ext. 3161  
 10406 Tucker Street  
 Beltsville, MD 20705

Fax Number: 301-595-0427  
 Email: craig.mackay@sherwin.com

THIS IS THE FOURTH (4) OF SIX (6) RENEWAL OPTIONS. THIS DOES NOT REPRESENT YOUR AUTHORITY TO SHIP. THE ORDERING AGENCY WILL ISSUE A PURCHASE ORDER TO AUTHORIZE SHIPMENT. THIS CONTRACT CONSTITUTES ACCEPTANCE OF YOUR BID ALONG WITH ALL TERMS AND CONDITIONS THEREIN AND SIGNIFIES THE OFFERER'S KNOWLEDGE AND ACCEPTANCE OF ALL TERMS AND CONDITIONS SET FORTH WITHIN THE INVITATION FOR BID.

CONTRACT PERIOD: June 11, 2016 through June 10, 2017.

SCOPE: This is a TERM contract to provide for Paint, Interior and Exterior, for all State Agencies and Cooperative Purchasing Program participants within Arkansas. A multiple award contract is whereby more than one vendor is awarded essentially the same line item. The Director of the Office of State Procurement has approved the use of this multiple award contract.

QUANTITIES: The quantities stated within were estimated. The State may order more or less as is required during the term of the contract.

**GENERAL CONDITIONS AND INSTRUCTIONS TO VENDOR:**  
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\_\_\_\_\_  
Purchasing Official/Fiscal Officer

\_\_\_\_\_  
Date



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Table with 5 columns: Item, Material/Description, Target Qty, UM, Unit Price, Amount. Row 1: 0003, 10024278 PAINT PRODUCT, MISC,LUMP SUM, 100,000.00, Lump Sum, 1.00, \$ 100,000.00

Estimated Net Value 100,000.00

COOPERATIVE PROCUREMENT PROGRAM PARTICIPATION: Arkansas' Purchasing Law provides that local public procurement units (counties, municipalities, school districts, certain nonprofit corporations, etc.) may participate in state procurement contracts.

CONDITIONS OF CONTRACT: The vendor shall at all times observe and comply with federal and State laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of this contract which in any manner affect the completion of the work.

STATEMENT OF LIABILITY: The State will demonstrate reasonable care but shall not be liable in the event of loss, destruction, or theft of contractor-owned items to be delivered or to be used in the installation of deliverables.

COST: The price includes all of the materials and operations necessary for the production of items specified. This includes but is not limited to all packaging, FOB destination, freight paid, inside delivery to specified locations and return of furnished production materials.

PRICE CHANGE CLAUSE: Prices will remain firm for the first twelve (12) months of the contract period. If adjustments are necessary at the time of renewal, a request for increase must be submitted in writing to the Office of State Procurement with supporting manufacturer's documentation indicating percentage of increase and effective date.

The State further reserves the right to reject any proposed price increase, cancel the contract and re-bid if determined to be in the best interest of the State. The Office of State Procurement will consider and rule on all price increase requests within twenty (20) working days of receipt of all required documentation from the contractor.

It is understood and agreed in the event of a reduction in the manufacturer's price, the State of Arkansas will be given the full benefit of any such reduction in price immediately upon the effective date of reduction. The State of Arkansas may monitor reductions by requesting the manufacturer to provide cost comparison data at any time during the contract term.

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**PACKAGING:** Finished items shall be packaged and cartoned so as to protect contents from damage during shipment, handling and storage. Each shipment shall have a packing slip that identifies the requester, purchase order number, part numbers, and unit price and quantity shipped. If the delivery is not a complete shipment, identify items not shipped and provide a projected completion date for those items.

**CANCELLATION:** In the event the State no longer needs the commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

Any purchase orders issued and received by the vendor prior to the cancellation date may be processed by the vendor and paid for but this does not obligate the State to continue the contract beyond the cancellation date.

**INVOICING:** Contractor will invoice the Ordering Entity. An itemized invoice addressed to the ordering agency reflecting the purchase order number, quantity, contract number SP-12-0120, item description, and unit price is required.

**DO NOT INVOICE THE STATE OF ARKANSAS, OFFICE OF STATE PROCUREMENT**

**RECORDS MAINTENANCE:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for all payments made to the Contractor pursuant to the Contract. The records shall be retained by the Contractor for at least five (5) years after the Contract terminates, or until all audits initiated within the five (5) years have been completed, whichever is later.

**DELIVERY:** FOB Destination, freight paid - Normal Delivery is five (5) days ARO. "Working days" shall be defined as Monday through Friday of each week exclusive of all official State holidays.

Repeated failure to meet specified delivery requirements may result in Contract termination, or the State may pursue any other remedies that may be available to it, at its discretion.

**Definition - Normal Delivery:** Unit prices quoted include, at no additional charge, the contractor providing "normal delivery" service. "Normal delivery" is defined in this contract as: "Delivery to a building with an accessible dock to one specific room or area by use of material handling equipment without breaking shipping container to hand truck deliver individual cartons."

Delivery locations falling in the perimeters of this definition will not be subject to additional delivery charges.

**MINIMUM VENDOR REQUIREMENTS:** Vendors must have:

- a) Company website (catalog)
- b) Contents to be of current manufacturing technology
- c) Tracking Abilities of both shipped and invoiced products
- d) Work with purchasers to establish a program for disposal of used paint containers, unused supplies, or obsolete paint within thirty (30) days of request by entity.
- e) Provide electronic notification to the Office of State Procurement of upcoming manufacturer sponsored events related to new technology, product introductions, training seminars, mobile product demonstrations, etc.

**REPORTING REQUIREMENTS:** Contractor is required to submit Quarterly Reports reflecting usage activity. The

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reports are to be submitted to: OSP Reports@dfa.arkansas.gov. Office of State Procurement will work with contractors to determine an acceptable format for reporting. These reports are due by the 15th of the month following the quarter's activity. The minimum information the reports shall contain is: Contract Reference Number-SP-12-0120, item #, Quantity Ordered, and Total Cost per line item. Information shall be provided for both state agencies and cooperative entities. Information for state agencies and cooperative entities may be submitted on one report; however information shall be shown separately. The State of Arkansas reserves the right to require reporting by individual agency.

Failure to provide this information on time may be grounds for exclusion from participation in the next contract due to a non-responsible vendor.

**TECHNICAL SPECIFICATIONS****I. Paints**

- a) All paints must meet applicable Federal Standards and conformance with referenced Master Painters Institute (MPI) numbers. The manufacturers' products shall be in compliance with the referenced Master Painters Institute (MPI) Specifications.
- b) Interior finishes - all shall be based on the standard white of the product line offered.
- c) Colored paints must be brand mates of the standard white of the line offered.
- d) Exterior and interior, with the exception of Occupational Safety and Health Administration (OSHA) Safety Colors, must be available in a full range of colors, although the award is based on the standard white of the line, the award will be for all colors in the line. This shall include standard ready-mixed colors as well as colors tinted at the time of purchase.
- e) All paints purchased and listed on this contract must represent premium top quality paints available in full range of colors.
- f) All paints must meet current State and Federal Volatile Organic Compound (VOC) Regulations.
- g) All paints must be standard shelf stock

**II. Labels**

- a) Manufacturer's standard label must be affixed by the manufacturer to each container
- b) Following data must be printed on each label: manufacturer, trade name, brand, catalog number, type, color, analysis of the contents and complete directions for use.

**III. Composition/MSDS/MPI**

- a) Composition must be shown in percentage by weight on preprinted labels and/or technical data sheets.
- b) Material Safety Data Sheets (MSDS) or CD containing MSDS are to be provided with each shipment on that respective paint.
- c) If items are not listed on MPI Approved Products List, the vendor must present some form of proof that those items meet the MPI Approved Specifications.
- d) Sheets (MSDS) or CD containing MSDS are to be provided with each shipment on that respective paint.
- e) If items are not listed on MPI Approved Products List, the vendor must present some form of proof that those items meet the MPI Approved Specifications.

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**OUTLINE AGREEMENT AWARD TERMS AND CONDITIONS**

1. **GENERAL:** All terms and conditions stated in the invitation for bid govern this contract.
2. **PRICES:** Prices are firm and not subject to escalation, unless otherwise specified in the invitation for bid.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** Most state agencies must pay state sales tax. Before billing, the contractor should contact the ordering agency to find out if that agency must pay sales tax. Itemize state sales tax when applicable on invoices.
5. **BRAND NAME REFERENCES:** The contractor guarantees that the commodity delivered is the same as specified in the bid.
6. **GUARANTY:** All items delivered are to be newly manufactured, in first- class condition, latest model and design, including, where applicable, containers suitable for shipment and storage unless otherwise indicated in the bid invitation. The contractor guarantees that everything furnished hereunder will be free from defects in design, workmanship, and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished. The contractor further guarantees that if the items furnished hereunder are to be installed by the contractor, such items will function properly when installed. The contractor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling, and registration. The contractor's obligations under this paragraph shall survive for a period of one year from the date of delivery, unless otherwise specified in the invitation for bid.
7. **AWARD:** This contract award does not authorize shipment. Shipment against this contract is authorized by the receipt of a purchase order from the ordering agency. A written purchase order mailed or otherwise furnished to the contractor results in a binding obligation without further action by either party.
8. **DELIVERY:** The term of the contract is shown on the face of the contract award. The contractor is required to supply the state's needs during this term. The number of days required to place the commodity in the receiving agency's designated location under normal conditions is also shown. Consistent failure to meet delivery without a valid reason may cause removal from the bidders' list or suspension of eligibility for award.
9. **BACK ORDERS OR DELAY IN DELIVERY:** Back orders or failure to deliver within the time required may be default of the contract. The contractor must give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. If the reason is not acceptable, the contractor is in default. The Office of State Procurement has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere.
10. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery shall be made during agency work hours only, 8:00 a.m. to 4:30 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.
11. **STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and

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the agency cannot accept delivery.

12.DEFAULT: All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Default in promised delivery or failure to meet specifications authorizes the Office of State Procurement to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor.

13.VARIATION IN QUANTITY: The state assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.

14.INVOICING: The contractor shall submit an original and two copies of an itemized invoice showing the bid number and purchase request number when itemized in the invitation for bid. Invoices must be sent to "Invoice to" point shown on the purchase order.

15.STATE PROPERTY: Any specifications, drawing, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for the use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized, and be returned at the contractor's expense to the F.O.B. point, properly identifying what is being returned.

16.ASSIGNMENT: This contract is not assignable nor the duties hereunder delegable by either party without the written consent of the other party to the contract.

17.OTHER REMEDIES: In addition to the remedies outlined herein, the contractor and the state have the right to pursue any other remedy permitted by law or in equity.

18.LACK OF FUNDS: The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the contractor by the state. If the state is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission. If the contractor has provided services and there are no longer funds legally available to pay for the services, the contractor may file a claim.

19.QUANTITIES: The state may order more or less than the estimated quantity in the invitation for bid.

20.DISCLOSURE: Failure to make any disclosure required by the Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

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