



City of Palo Alto

Purchasing and Contract Administration
P.O.Box 10250
Palo Alto CA 94303
Tel:(650)329-2271 Fax:(650)329-2468

Purchase Order

Vendor Address

THERMO BOND BUILDINGS LLC
1001 W MAIN ST
ELK POINT SD 57025
Tel: 605-952-0070

Ship To:

Utilities Department
City of Palo Alto
250 Hamilton Avenue
Palo Alto CA 94301

Bill To:

Utilities Department
City of Palo Alto
250 Hamilton Avenue
Palo Alto CA 94301

P.O. NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, SHIPPING PAPERS AND CORRESPONDENCE PERTAINING TO THIS ORDER

PO Number	4524000496
Date	06/03/2024
Vendor No.	108224
Payment Terms	Payment Due 30 days
FOB Point	F.O.B. Palo Alto
Ship via	Vendor to ship best way
Required Date	11/18/2024
Buyer/Phone	Renee Howard / 650-496-5900
Email	renee.howard@cityofpaloalto.org

DELIVERIES ACCEPTED ONLY BETWEEN 7:00 AM & 3:00 PM UNLESS OTHER ARRANGEMENTS ARE INDICATED HEREIN

Page 1 of 2

Item	Material/Description	Quantity	UM	Net Price	Net Amount
0010	<p>Award in accordance with Proposal No. 2401-30 dated March 14, 2024 and Staff Report 2403-2713 approved on June 18, 2024.</p> <p>PO NTE: \$313,844.00</p> <p>Upon notification of items shipping staff will advise the delivery address for all items.</p> <p>Fiber Hut</p> <p>Purchase and delivery of Fiber Hut for Fiber to the Premise project.</p> <p>- 11#-6"x20#x9# Shelter \$204,375</p> <p>Optional add on items:</p> <p>- Generator 25kw diesel engine \$43,335</p> <p>- Inverter - (1) 4K 120VAC inverter N+ 1 \$8,100</p> <p>- DC Plant \$20,700 500A Max Capacity 48VDC Plant configured for 300A N+ 1 100AH Lithium battery pack</p> <p>Project Manager: Dave Yuan (650) 329-2522</p>	276,510	USD	1.00	276,510.00

Cecilia Magana

Chief Procurement Officer

THIS P.O. IS SUBJECT TO THE TERMS AND CONDITIONS STATED BELOW AND ON THE LAST PAGE
SPECIFICATIONS - Any specification and/or drawings referred to and/or attached hereto are expressly made a part of this Purchase Order.
DELIVERY - Please notify the City promptly if delivery cannot be made on or before the date specified. If partial shipment is authorized, so indicate on all documents. Complete packing lists must accompany each shipment.
INVOICE - A separate invoice is required for each order. Send to address indicated above.



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Page 2 of 2

Item	Material/Description	Quantity	UM	Net Price	Net Amount
	Email: dave.yuan@cityofpaloalto.org				
	TOTAL NTE: \$313,844.00				
0020	Shipping (Estimated)	21,999	USD	1.00	21,999.00
0030	Crane Off Loading (Estimated)	15,335	USD	1.00	15,335.00
				Sub-Total	313,844.00
				Sales Tax	25,231.54
	*** ORDERING VIA EMAIL ***				
	**** PRICE HAS BEEN QUOTED ****				

Cecilia Magana

Total 339,075.54

Chief Procurement Officer

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TERMS AND CONDITIONS OF PURCHASE

ACCEPTANCE/AGREEMENT: City of Palo Alto (City) reserves the right to reject any and all quotations, to waive any informalities, and, unless otherwise specified by Seller, to accept any item in a quotation. By accepting or filing this Purchase Order (P.O.), Seller agrees to the terms and conditions herein which shall prevail over any inconsistent provision in any form or other paper submitted by Seller. All shipments or services performed shall be deemed to have been made pursuant hereto. No other terms are acceptable. This P.O., including all specifications and drawings, shall constitute the entire agreement between the parties unless modified in writing by City.

CITY'S PROPERTY: Seller agrees that the information, tools, jigs, dies, or materials, and drawings, patterns, and specification supplied or paid for by City shall be and remain City property and shall be held by Seller for City unless directed otherwise. Seller shall account for such items and keep them protected, insured, and in good working conditions without expense to City.

DELIVERY: The terms of delivery are as stated on the reverse side hereof. The obligation of Seller to meet the delivery dates, specifications, and quantities set forth herein is of the essence of this P.O. No boxing, packing, or cartage charge will be allowed unless authorized by this P.O. Deliveries are to be made both in quantities and at times specified herein or, if not, such quantities and times are specified pursuant to City's written instruction. Items not delivered may be canceled without penalty to City. Shipments in greater or lesser quantity that ordered may be returned at Seller's expense unless written authorization is issued by City.

PRICES: The price which Seller charges in filling this P.O. shall not be higher than Seller's most recent quote or charge to City for such materials, supplies, services and/or installations unless City expressly agrees otherwise in writing. Notwithstanding the prices set forth the P.O. City shall receive the benefit of any general reduction in the price of any item(s) listed herein which may be made by Seller at any time prior to the last delivery of goods or services covered by this P.O.

TERMINATION: City shall have the right to terminate this P.O. or any part thereof upon ten (10) days notice in writing to Seller.

(1) Without Cause. City may terminate all or any part of this P.O. without cause. Any claim by Seller for damages due to termination without cause must be submitted to City within thirty (30) days after effective date of termination.

(2) For Cause. If Seller fails to make any delivery in accordance with the agreed delivery date, delivery schedule, or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this P.O., City may, in addition to any other right or remedy provided by this P.O. or by law, terminate all or any part of this P.O. in writing without any liability of City with respect to Seller at any time during the term of this P.O. In the event of termination for cause, City may purchase supplies or services elsewhere on such terms or in such manner as City may deem appropriate and Seller shall be liable to City for any cost and other expenses incurred by City, which is charged to City.

CHANGES: City shall have the right at any time by written notice via P.O. Change Order to Seller to make changes in the specifications, the quantity of items called for, delivery schedules, and requirements covering testing, packaging, or destination. Any claim by Seller for adjustment under this clause shall be deemed waived unless made in writing with then (10) days after receipt by Seller of notice of such change. Price increases or extensions of time for delivery shall not be binding on City unless evidenced by a P.O. Change Order issued by City's Purchasing Manager.

INSPECTION: City shall have the right to inspect and approve or reject any materials, supplies, services and/or installations upon arrival of notice of completion prior to payment without regard to the manner of shipment, completion, or any shipping or price terms contained in this P.O. All materials, supplies, services and/or installations must be furnished as specified.

- (1) Defective, damaged, and nonconforming materials and/or supplies may be returned for credit or refund, at Seller's expense. City may charge Seller for all expenses of unpacking, examining, repacking and reshipping of such materials and/or supplies.
- (2) Defective, incorrect and nonconforming services and/or installations may be returned for credit or refund, at Seller's expense. All of the above notwithstanding prior payment by City.

- WARRANTY:** Seller expressly warrants that all materials, supplies, services and/or installations covered by this P.O. shall:
- (1) conform to the specifications, drawings, samples, or other descriptions specified by City or if none are so specified, to Seller's standard specification or the standards of the ASTM or ANSI or other national standard organizations;
- (2) be new and unless specified to the contrary on the face hereof, will be free from defects in material and workmanship and will be free of all liens and encumbrances and will conform to any affirmation of facts made on the container or label;
- (3) be adequately contained, packaged, marked, labeled and/or provided in compliance with all applicable federal and state laws and regulations (including materials deemed hazardous);
- (4) be performed within the rules and regulations of the Occupational Safety and Health Act of 1970 (as amended);
- (5) be produced or transferred or disposed of as required by federal and state laws and regulation under the conditions of the Toxic Substances Control Act; the Hazardous Materials Control and Hazardous Waste Regulations; and other toxic laws and programs. Seller further expressly agrees to protect, indemnify, and hold harmless City, its employees and agents for any loss, damage, fine, liability, fee (including reasonable charges and fees) or expense arising in connection with or resulting from Seller's failure to furnish materials or supplies or perform services that conform with any warranty contained herein.
- (6) have good marketable title.

GOVERNING LAW: This P.O. shall be governed by the laws of the State of California.

INDEPENDENT CONTRACTOR, INSURANCE: Seller certifies, by acceptance, that he/she is an independent contractor. Seller shall protect, defend, and indemnify and hold City harmless against all damages, liability, claims, losses and expenses (including attorney's fees) arising out of , or resulting in any way from Seller's negligence in providing the goods or services purchased hereunder or from any act or omission of Seller, its agents, employees, or subcontractors, Seller shall maintain such public liability insurance, including contractual liability, automobile and general public liability, (including non-owned automobile liability) Worker's Compensation, and employer's liability insurance as well adequately protect City against such damage, liabilities, claims, losses, and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by City.

EQUAL OPPORTUNITY CLAUSE: By acceptance of this P.O., Seller certifies it is in compliance with the Equal Opportunity Clause required by Executive Order 11246, as amended, and the Palo Alto Municipal Code, as amended, including Affirmative Action Compliance Programs for Veterans; Handicapped; and Minority Business, and other equal opportunity programs.

FORCE MAJEURE: City may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such materials, supplies, services and or installations at the direction of City and shall deliver them when the cause affecting the delay has been removed. City shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this P.O. and City's request. Seller shall also be excused if delivery is delayed by unforeseen events beyond its reasonable control, provided Seller notifies City as soon as they occur. City may cancel this P.O. if such delay exceeds thirty (30) days from the original delivery date. Seller shall use its best efforts to grant preference to this P.O. over those of other customers, which were placed after this P.O.

AUTHORITY OF AGENT OR FACTOR: Seller represents that, whenever it executes this P.O. on behalf of a third party as an agent or factor, it shall disclose the existence of the agency or factor relationship to City. Seller shall be deemed to have the legal authority to enter into this P.O. with City on behalf of the third party.

INTERPRETATION OF CONTRACT DOCUMENTS: In the event of a conflict between the terms of this P.O. and the attached specification with respect to any obligation of Seller, the provision which impose the greater obligations upon Seller shall prevail.

TERMS AND CONDITIONS OF PURCHASE

ENVIRONMENTALLY PREFERRED PURCHASING REQUIREMENTS: Seller agrees to comply with the City's Environmentally Preferred Purchasing Requirements.

(1) Hazardous Waste:

Seller shall take-back all spent or otherwise discarded hazardous products sold to the City by the Seller if the spent or discarded products are classified as hazardous or universal wastes by State or Federal regulations. Seller shall provide convenient collection and recycling services (or disposal services if recycling technology is unavailable) for all universal wastes, which originate from the Vendor. Hazardous waste manifests or bills of lading must be provided to City staff upon request. Recycling and reuse of hazardous wastes must occur within the United States. Universal waste lists and information are available www.dtsc.ca.gov/HazardousWaste/UniversalWaste/. A hazardous waste list is available at <http://www.calrecycle.ca.gov/LEA/Training/wasteclass/yeah.htm>. Additional information can be obtained by contacting the City of Palo Alto Hazardous Waste Department at (650) 496-6980.

(2) Zero Waste and Pollution Prevention:

Per Palo Alto City Council policy, the City is targeting to achieve Zero Waste by 2021. The City must also meet Municipal Regional Stormwater Permit requirements requiring no visible impact from litter via stormdrains by 2022. To that end the vendor, manufacturer and or contractor must individually or collaboratively comply with the waste reduction, reuse and recycling requirements of the City's Zero Waste and Pollution Prevention Programs. Seller acknowledges and agrees that if Seller fails to fully and satisfactorily comply with these requirements, the City will suffer, as a result of Seller's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Therefore, the Seller agrees that in addition to all other damages to which the City may be entitled, in the event Seller fails to comply with the below requirements Seller shall pay City as liquidated damages the amounts specified below. The liquidated damage amount is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer as a result of such non-compliance.

- Sellers shall adhere to the standard that all printed materials provided to the City that are generated from a personal computer and printer including, proposals, quotes, invoices, reports, and public education materials shall be double-sided, printed on a minimum of 30% post-consumer content paper or greater unless otherwise approved by the City's Environmental Services Division (650) 329-2117. Materials printed by a professional printing company shall be a minimum of 30% post-consumer material or greater and printed with vegetable based inks. Liquidated damages of \$30 per document will be assessed by City for failure to adhere to this requirement.
- All paper packaging must be Forest Stewardship Council (FSC) Certified.
- All primary, secondary and shipping (tertiary) packaging be minimized to the maximum extent feasible while protecting the product being shipped.
- All primary, secondary and shipping packaging shall be recyclable in the City's recycling program. A complete list of items accepted for recycling are found at www.zerowastepaloalto.org or by calling (650) 496-5910. If any portion is received that does not meet this requirement, liquidated damages of \$235 or a minimum of \$50 if the combined product and shipping cost is \$235 or less will be assessed by City for failure to adhere to this requirement.
- Expanded foam plastics (e.g., foam or cushion blocks, trays, packing 'peanuts'), such as but not limited to polystyrene (aka Styrofoam[tm]), polypropylene, or polyurethane shall not be used as primary, secondary or tertiary/shipping packaging with the following exceptions:
 - o Primary packaging made from these materials may be used if the vendor, manufacturer, contractor individually or collaboratively does one of the following:
 - (a) takes the material back at the City's convenience and at no cost to the City, or
 - (b) pays the City of Palo Alto's disposal costs via payment of liquidated damages of \$235, or a minimum of \$50 if the combined product and shipping cost is \$235 or less.
 - o Bioplastics that meet ASTM D6400 standards for compostability may be accepted with approval from the City's Environmental Services Division subject to local municipal compost facility requirements.
 - o If approved by the City's Environmental Services Division, a packaging requirement may be waived if no other viable packaging alternative exists.

- Reusable/returnable pallets shall be used and taken back by the Seller, at no additional cost to the City. Seller shall provide documentation upon request ensuring reuse of pallets and/or recycling of broken pallets. Liquidated damages of \$262 or a minimum of \$50 if the combined product and shipping cost is \$262 or less will be assessed by City for failure to adhere to this requirement.

(3) Energy and Water Efficiency:

Seller shall provide products with an ENERGY STAR, Water Sense or State of California standard rating, whichever is more efficient, when ratings exist for those products. A life cycle cost analysis shall be provided to the City upon request and shall at minimum include: first cost, operating costs, maintenance costs, and disposal costs.

Contacts for additional information about City of Palo Alto Hazardous Waste, Zero Waste and Utilities programs:

Hazardous Waste Program (Public Works)

(650) 496-6980

Zero Waste Program (Public Works)

(650) 496-5910

Watershed Protection

(650) 329-2117

Energy Efficiency

(650) 496-2244

(4) Liquidated Damages:

Seller agrees that failure to comply with the City's Environmentally Preferred Purchasing Requirements will result in Liquidated Damages, according to the table marked Liquidated Damages on page 3 of this P.O.

TERMS AND CONDITIONS OF PURCHASE

NONCOMPLIANCE WITH ENVIRONMENTALLY PREFERRED PURCHASING REQUIREMENTS, LIQUIDATED DAMAGES:

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of liquidated damages; the acceptable performance level, and the amount of liquidated damages for failure to meet the contractually required standards of performance.

Event of Non-Performance	Acceptable Performance Level (Allowed events per Fiscal Year)	Liquidated Damage Amount
Recycled Paper Use Failure to use 30% recycled content paper	1	\$30 per each document
Recyclable Packaging Materials Failure of Seller to use secondary and shipping packaging that is recyclable in the City's recycling program.	1	\$235 or a minimum of \$50 if the combined product and shipping cost is \$250 or less will be incurred if this is not adhered to.
Expanded Foam Plastics Unapproved use of expanded foam plastics for secondary or shipping packaging	0	\$235 or a minimum of \$50 if the combined product and shipping cost is \$235 or less
Pallet Use Failure of Seller to take-back and reuse pallets, recycling only broken pallets, at no additional cost to the City.	1	\$262 or a minimum of \$50 if the combined product and shipping cost is \$2 or less