

City of San Diego Environmentally Preferable Purchasing Program
EP³
Contract Language Recommendations

April 2007

Introduction

Following are recommendations for contract language that can be used in City Request for Bids (RFB's), Request for Proposals (RFP's), and Request for Information (RFI's), as well as for the procurement of environmentally preferable products and services.

This is not a comprehensive listing. Additional contract language examples for a wide variety of products can be found on EPA's Environmentally Preferable Purchasing website at <http://yosemite1.epa.gov/oppt/epstand2.nsf>.

General Language for Bid and/or Proposal Documents

Recommended Language to Include in all Bid Documents: City of San Diego Administrative Regulation 35.80, requires all City Departments and Divisions to use environmentally preferable purchasing (EPP) criteria when making purchases for commodities and services. Environmentally preferable purchasing refers to securing products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. These products minimize the consumption of resources, energy and water; prevent the creation of solid waste, air pollution or water pollution; minimize the use of materials or processes which compromise the environment; and/or promote the use of non-toxic substances and avoid toxic materials or processes.

Twelve basic categories are used to provide guidance as to what constitutes an environmentally preferable product (definitions for each category are found in Appendix __). These categories include:

1. Alternative Energy Source
2. Bio-based
3. Biodegradable
4. Compostable
5. High Recycled Content
6. Low Toxicity
7. Low Volatile Organic Compound (VOC)
8. Pollution (air, water, solid waste) Reduction
9. Recyclable
10. Repairable
11. Resource Efficient (water conserving and/or energy efficient)
12. Reusable

Furthermore, the City of San Diego is required to purchase recycled content products (RCPs) rather than non-recycled products whenever price, quality, and availability are comparable (Public Contract Code 22150-22154. See www.leginfo.ca.gov/cgi-bin/waisgate?WAIISdocID=92712514157+0+0+0&WAIISaction=retrieve for complete text). In addition, the City will utilize the U.S. Environmental Protection Agency's (EPA) guidelines for minimum recycled content product standards as a means to meet product preferences consistent with Administrative Regulation 35.80 and Council Policy 100-14 (see www.epa.gov/epaoswer/non-hw/procure/index.htm).

Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

Specific Language for Bid Submissions: In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all bids submitted should comply with the following guidelines:

All copies should be printed double-sided.

1. All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on tree-free paper (i.e. paper made from raw materials other than trees, such as kenaf). All bids should note the level of recycled content contained in the paper being used.
2. Unless absolutely necessary, all bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials, such as plastic report covers, plastic dividers, vinyl sleeves and GBC binding. Three-ringed binders, glued materials, paper clips and staples are acceptable.
3. Vendors should submit materials in a format that allows for easy removal and recycling of paper materials.
4. Vendors are encouraged to use other products that contain recycled content in their bid documents. Such products may include, but are not limited to, folders, binders, paper clips, discs, envelopes, boxes, etc. Where appropriate, vendors may wish to note which products in their bids are made with recycled materials.
5. Unnecessary samples, attachments or documents not specifically asked for should not be submitted.

Source: www.comm-pass.com (RFR-Environmental Consulting Service DCP-02-03)

Product Specific Language Examples for Bid and/or Proposal Documents

Re-refined Motor Oil

Example 1: City of San Diego Council Policy 100-14 and Administrative Regulation 35.80 provides for the purchase of environmentally preferable products, such as re-refined oil and lubrication products. "Re-refined" means oil products manufactured with a minimum of one hundred percent (100%) re-refined base stock (for oils meeting the API CH-4 and SJ specification), and also for oil manufactured with a minimum percentage of 85% re-refined base stock, for oils meeting the API CI-4 specification.

It is the intent of these specifications to describe the minimum acceptable standards. The City of San Diego shall be notified, and these specifications amended, when new industry standards are set or existing standards are superseded.

******(Following is an example of one section of the bid specifications)******

15W-40 Motor Oil

Multigrade motor oil meeting the performance and warranty requirements of virtually all diesel and gasoline manufactures, including Caterpillar, Cummins, Detroit Diesel and Mack.

API Service Classification: CH-4, CG-4, CF-4, CF-2, CF and SJ

ACEA E2, Caterpillar diesel engines, Cummins CES20076, Cummins CES20071, Detroit Diesel 7SE270, Navistar diesel engines, Mack EO-M PLUS, Mack EO-M, Mercedes-Benz 228.1, Volvo VDS, Allison C-4, Caterpillar TO-2

U.S. Government CID A-A-52306

Effective by January 2003. This oil must meet the following specifications in addition to the above and must be demonstrated by the Vendor:

API Service Classification (Diesel Engines): CI-4
 Cummins: CES20078

State product name and number offered: _____

Estimated Usage	Unit Price Virgin	Total Price Virgin	Unit Price Re-refined	Total Price Re-refined
36,000 gal 15W40 Bulk	\$_____	\$_____	\$_____	\$_____
3,025 gal – (55 gal/drum) 15W40 Drum	\$_____	\$_____	\$_____	\$_____

Source: King County, WA (<http://www.metrokc.gov/procure/green/oil.htm#4>)

Example 2: From EPA:

Recommended Recovered Materials Content Ranges:

EPA recommends that procuring agencies set their minimum re-refined oil content standard at the highest level of re-refined oil that they determine meets the statutory requirements of RCRA section 6002©(1), but no lower than 25 percent re-refined oil.

EPA recommends that procuring agencies review their procurement practices and eliminate those which would inhibit or preclude procurement of lubricating oils containing re-refined oil. For example, procuring agencies should review the practices of inviting bids and issuing contracts to do the following:

- Supply a broad range of lubricating oil products on an “all or none” basis.
- Supply lubricating oils for an excessively long period of time.
- Deliver lubricating oils to geographic locations throughout the United States or to an excessively broad geographic area.
- Supply excessively large contract quantities.

Product Specifications:

EPA recommends that procuring agencies use the following specifications when procuring lubricating oils containing re-refined oil:

Engine lubricating oils:

- A-A-52039—Commercial Item Description, Lubricating Oil, Automotive Engine, API Service SG (replaced MIL-L-46152, Lubricating Oil, Internal Combustion Engine, Administrative Service).
- API Engine Service Category SF—1980 Gasoline Engine Warranty Maintenance Service (or current category).
- A-A-52306—Commercial Item Description, Lubricating Oil, Heavy-Duty Diesel Engine (for wheeled vehicles only).
- API Engine Service Category CC—Diesel Engine Service (or current category).
- MIL-L-2104, Lubricating Oil, Internal Combustion Engine, Combat/Tactical Service.
- API Engine Service Category CD—Diesel Engine Service (or current category).
- MIL-L-21260D (or current version)—Lubricating Oil, Internal Combustion Engine, Preservative and Break-in.
- MIL-L-46167B (or current version)—Lubricating Oil, Internal Combustion Engine, Arctic.

Hydraulic fluids

- MIL-H-5606E (or current version)—Hydraulic Fluid, Petroleum Base, Aircraft, Missile, and Ordnance.
- MIL-H-6083E (or current version)—Hydraulic Fluid, Petroleum Base, For Preservation and Operation.

Gear oils

- MIL-L-2105D (or current version) Lubricating Oil, Gear, Multipurpose.

Source: <http://www.epa.gov/cpg/products/lubricat.htm>

Other Source at CIWMB: <http://www.ciwmb.ca.gov/UsedOil/Rerefined/>

Reporting Requirements

Paper & Paper Products

The supplier shall report the total dollar and unit volume of recycled and non-recycled paper and paper products supplied to each County department during each calendar year quarter. This report shall be submitted to the Environmental Purchasing Program, in the King County Procurement and Contract Services Section, during the month following the end of each completed quarter. Recycled paper means paper that meets EPA's Comprehensive Procurement Guidelines (CPG).

Source: King County, WA (<http://www.metrokc.gov/procure/green/standpar.htm>)

Other Commodities

For commodities that are not tracked through Purchasing's EP³ tracking report, the following language could be used:

The supplier shall report the total dollar and unit volume of environmentally preferable products supplied to each City department during each Fiscal Year (July 1 – June 30) quarter. This report shall be submitted to the Environmental Purchasing Program Coordinator in the City of San Diego Purchasing and Contracting Department, during the month following the end of each completed quarter.

Certification Requirements

Recommended Language: City of San Diego Administrative Regulation 35.80 requires all City Departments and Divisions to use environmentally preferable purchasing (EPP) criteria when making purchases for commodities and services. In order to assist City departments in securing environmentally preferable products and services, vendors shall provide certification that the product or service offered is compatible with Administrative Regulation 35.80. Certification can include any of the following: information from Material Data Safety Sheets (MSDS); verification of recycled content; outside agency certification (such as Green Seal, Energy Star, Scientific Certification Systems, etc.); verification of manufacturers' claims, etc. A signed Environmentally Preferable Purchasing Certification form (Appendix __) is required.

See www.ciwmb.ca.gov/BuyRecycled/StateAgency/Certify.htm for example of their certification form

OR require the following:

The contractor shall execute the following:

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products meet the applicable contract specifications.

(Signature of the Officer or Employee)

Company

Typed Name of Officer or Employee/Title

Date

Recycled Content Requirements – General

Every person or organization awarded a contract, lease or grant by the CITY acknowledges and agrees that it is aware of and will comply with Council Policy 100-14, effective May 26, 1992 relating to the purchase of products with recycled content.

Source: San Diego County of Education Contract

Janitorial Cleaning Products and/or Hazardous Substances

Example 1 : (Excerpts) Recycling collection specified. Section under “Required Submittals” included: Proposed environmentally preferable chemical cleaning products. At a minimum, the Plan must identify products by brand name for each of the following product types (lists 19 products types, such as all-purpose cleaners, degreasers, polish, carpet cleaner, disinfectant, etc.). The product attributes for the proposed product brands in each of the above categories must be summarized on the form included in the Solicitation package. If for some reason a product is found later to be ineffective, or the Contractor would otherwise like to propose an alternative product or, if the Contracting Officer would like to propose a more environmentally preferable product, either the Contractor or Contracting Officer may propose for consideration an “equal” product through the Stewardship Task Force. The Contracting Officer is the final decision maker for such substitutions and must approve each in writing.

Source: http://www.doi.gov/greening/sustain/clean_secL.doc

Source: <http://www.doi.gov/greening/sustain/doiclean.html>

More specifications:

http://www.stopwaste.org/docs/janitorial_cleaning_products.pdf (see Appendix A)

http://www.responsiblepurchasing.org/purchasing_guides/download/index.php#cleaners

Example 2: (Excerpt from Department of Interior Custodial Contract)

(b) Chemical Cleaning Product Categories: The Department will evaluate the Mandatory and Desirable characteristics of products in five (5) designated Chemical Cleaning Product Categories listed below. Offerors may propose more than one product within a product category (example only– brand “X” and brand “Y” for all-purpose cleaner) and/or propose a single product that addresses more than one product category or cleaning task (example only–brand “X” as all-purpose cleaner and general disinfectant).

Chemical Cleaning Product Categories

- (1) All-purpose cleaner

- (2) General degreaser
- (3) General disinfectant
- (4) Floor Stripper
- (5) Bathroom Cleaner

(2) No Sealed Aerosol Spray Cans: No products shall be used on-site that are contained in pressurized, sealed aerosol spray cans. The Department chooses to eliminate on-site use of products so delivered because these containers require additional handling to fully discharge product and propellant and are not reusable or recyclable. All chemical cleaning products must be available in either a liquid form or manual pump action sprays and/or concentrates that can be dispensed into pump bottles for use. Acceptable supporting data here may include a picture of the commercially available product delivery system (as in commercial literature) and/or description of the offeror's intended delivery system.

(3) Carcinogens: The Department wishes entirely to eliminate the use of products containing known and probable carcinogens. Accordingly, no chemical cleaning product shall contain constituent compounds that are classified by EPA as known or probable carcinogens. A complete MSDS for each product may provide sufficient data to enable assessment under this criterion. This information typically would be found under the "Health Hazard Data" section (Sec. VI) of the MSDS under "Carcinogenicity." Additional supporting product information may be requested of an offeror.

(4) Not a Hazardous Waste: Products must not constitute hazardous wastes, as defined at 40 CFR (Code of Federal Regulations) Part 261, when offered for disposal. A complete MSDS for each product may provide sufficient data to enable assessment under this criterion. This information typically would be found under Section VII, "Precautions for Safe Handling and Use," under the "Waste Disposal Method" portion of MSDS. Additional supporting product information may be requested of an offeror.

(d) Chemical Cleaning Product Desirable Characteristics: The following five (5) characteristics if present to some verifiable or demonstrable degree in an offered product (e.g., as indicated by manufacturer's literature and/or an MSDS for that product) will, assuming that the product otherwise meets efficacy requirements (see Subsection (e) hereof), receive more favorable consideration under the "Environmental Preferability" component of the evaluation.

(1) Minimizes skin, eye and respiratory irritation: It is desirable that chemical cleaning products not contain chemicals that are strong irritants to the skin, eye and respiratory system. See "The Cleaning Products Pilot Project," at <http://www.epa.gov/epp/pubs/cleaner.pdf>, where the user may review products for "Environmental Attributes" that EPA has considered including, Skin Irritation, Air Pollution Potential, Fragrances, Dyes, and Minimization of Exposure to Concentrates. Furthermore, it is desirable for certain chemical cleaning products to be used in liquid form rather than through a delivery system that "atomizes" or delivers the product as a fine mist. Eliminating such delivery minimizes the likelihood of inhalation by the user.

(2) Biodegradability: Offerors will receive more favorable consideration commensurate with the number of product categories for which proposed products exhibit partial or complete biodegradability. With respect to cleaners, solvents or any other non-paper product, "biodegradability" shall mean the definition set forth at subparagraph 4.2.2 of *Green Seal* Standard GS-8 for General Purpose Household Cleaners. Further, sufficient proof of biodegradability may be shown not only by conducting product testing as set forth in the referenced standard, but by peer-reviewed literature or databases or other proof that product biodegradability has been verified. *Green Seal* is an independent certifying organization that has developed environmental preferability standards through an open

process. It is located at 1400 Sixteenth Street, N.W., Washington, D.C. 20036, (202) 588-8400 (ask for Mark Petruzzi or Mike Shor). Website: <http://www.greenseal.org>. The relevant *Green Seal* standard is provided as Attachment F to this section.

(3) **Dyes and Fragrances:** It is a basic principle of pollution prevention to avoid unnecessary additives. Accordingly, offerors are asked to identify any dyes and/or fragrances that have been added to a product. The Department recognizes that some cleaning products may have a natural odor associated with the cleaning agent (e.g. a lemon odor in a citrus-based cleaner). If a dye or fragrance has been added, please note whether or not it is deemed to be of “food grade” in accordance with Food and Drug Administration (FDA) guidelines. If not “food grade,” offerors are asked to identify the constituent compounds of such dyes and/or fragrances.

(4) **Recyclable Containers/Minimization of Non-Recyclable Waste:** To minimize the generation of solid waste, the Department desires that newly delivered chemical cleaning products, cleaning equipment and machinery, be packaged in recyclable or reusable containers and that offerors examine ways of otherwise minimizing non-recyclable waste. Such means may include use of refillable product distribution devices and/or concentrates. Offerors are asked to identify for each product offered (a) whether the container can be sent back to the product distributor or manufacturer for reuse and/or (b) whether the container is made of readily recyclable material (e.g., glass, aluminum, steel, or PETE-1 or HDPE-2 plastics). Furthermore, offerors are actively encouraged to ensure that products use no, or only a minimal amount of, polypropylene and/or polystyrene (“styrofoam”) packaging or similar non-recyclable, non-biodegradable packaging. Manufacturer literature clearly depicting the product packaging may be helpful. Offerors are encouraged to describe such strategies in their “Waste Minimization and Recycling Strategy” submission (see Subsection (h) hereof).

(5) **Other:** Offerors are invited to submit any other information not specifically covered by the enumerated *Mandatory* or *Desirable* characteristics that has a bearing on the environmental preferability of offered products. This could include, for example, showing that a product category meets or exceeds the relevant *Green Seal* standards in whole or in part. Website: <http://www.greenseal.org>. As noted, useful guidance for identifying vendors or product brands having one or more environmentally preferable attributes can be found at EPA’s website or at GSA’s website.

B. **Product Efficacy Testing:** In addition to being evaluated for environmental preferability, offered products may be evaluated for their efficacy. That is, a chemical cleaning or recycled content product that meets all *Mandatory*, as well as one or more *Desirable*, characteristics still may be deemed ineffective for its intended purpose(s) after testing by the evaluators. The evaluators may, at their sole discretion, deem a product ineffective. In such a case, an offeror submitting an otherwise acceptable proposal will be informed of the nature of the deficiency(ies) of the product and have an opportunity to substitute the proposed product with another, effective product meeting all *Mandatory* characteristics. The Department’s failure to test a product for efficacy during the evaluation and award process shall in no way effect its ability to assess such efficacy and, if warranted, require product replacement(s) during the performance phase of the contract.

Source: http://www.doi.gov/greening/sustain/clean_secL.doc

Example 3: The Contractor shall provide information to the City of San Diego about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. Labeling: The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances supplied by the Contractor is clearly labeled, tagged, or marked with specific information:

- 1) Hazardous Substances: chemical name or common name; a hazard warning; name, address and telephone number of manufacturer.
- 2) Hazardous Mixtures: similar information as above
- 3) Single Chemicals: similar information as above
- 4) Chemical Mixtures: similar information as above

Container labels shall provide a warning as to the specific nature of the hazard arising from the container.

Source: Pennsylvania Department of General Services, Procurement
http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/archivedforms/std271_278a_799.rtf

Energy

Recommended Language: The Vendor must provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency. The vendor is encouraged to visit energystar.gov for complete product specifications and updated lists of qualifying products.

Source: http://www.energystar.gov/index.cfm?c=bulk_purchasing.bus_purchasing

Uniforms

Example: Use materials and processes that are environmentally preferable, particularly focusing on use of recycled materials, materials that require less-toxic garment care, and minimization of pesticides, persistent toxic chemicals, and carcinogens. In the manufacturing process, prevent pollution, recycled materials, and reduce or eliminate the generation of hazardous waste. Manufacture using processes that are energy efficient and that conserve water. Apply EPA’s Guiding Principles for Environmentally Preferable Purchasing to the lifecycle of the uniform components. Document recommendations to increase the environmental preferability of the uniform components in the comprehensive plan

Identify the least toxic manner by which the garment can be effectively cleaned. Consider recommendations of the EPA’s Laundry Environmental Stewardship program and EPA’s Design for the Environment: Garment and Textile Care Program.

Source: National Park Service, U.S. Department of the Interior, Purchase of Multiagency Uniforms

Toner Cartridges

Example 1: (Excerpts from King County)

Usage Report:

Annually, the contractor shall furnish to the Procurement Services Section usage reports showing a summary of the ordering and/or history of each county agency for the previous contract year. The report must show at minimum, description and total quantity of each item ordered during the period, reporting period, county agency, and total dollars per agency. King County reserves the right to request additional information, if required, when reviewing contract activity.

Qualifications:

To be eligible for award, offerors shall have prior successful experience providing remanufactured/**new** toner and accessories for printers, faxes and copiers.

Warranty:

- A. The Contractor shall guarantee the proper functioning of each remanufactured cartridge and shall replace any unacceptable cartridges within twenty-four (24) hours.
- B. The Contractor shall repair any damage to a laser printer attributable to a faulty cartridge within two (2) working days.

General Specifications:

- Samples shall be required upon request within two (2) working days. Samples shall be sent under separate cover with complete bid number marked on the outside of shipping carton. Each sample shall be tagged with the vendor's name and other pertinent information. Do not include sample with the bid. Sample shall be sent free of expense to King County.
- If not destroyed by the evaluation, samples will, upon request, be returned to the sender at sender's expense.
- If a problem exists with a remanufactured toner cartridge, the Contractor's representative shall be capable of discussing the contract and correcting any problems and shall visit the individual Department utilizing the remanufactured toner cartridge in person within two (2) business days after notification. If it is determined that the problem is with a remanufactured toner cartridge provided by the Contractor, the Contractor shall be required to furnish and deliver a remanufactured toner cartridge to the individual Department.
- The successful Contractor shall provide a toll-free number for ordering and problem reporting.
- The Contractor shall warrant that the use of the remanufactured cartridges will not void any manufacturer's warranty on the printers or faxes. The Contractor shall provide a one (1) year warranty on workmanship in the bid documentation.
- All cartridges shall be guaranteed to perform to the manufacturer's (OEM) specifications and to the satisfaction of King County. The cartridge shall equal or exceed the yield of the manufacturer's (OEM) specification. Any cartridge found defective, shall be replaced free of charge regardless of the amount of toner remaining in the cartridge. Defective cartridges shall be replaced or monies refunded within five (5) calendar days after the Contractor is notified.
- If the defective cartridge cause damage to the equipment, the Contractor shall be responsible for the payment of the repair.
- The Contractor has five (5) calendar days after the bid opening to provide (upon notification by the King County Purchasing Department), to provide a sample label for each individual shipping container along with instructions and a completed Materials Safety Data Sheet (MSDS).
- To be eligible for award, the Contractor shall include bids for all cartridges listed in this solicitation.
- The Contractor shall furnish documentation with this bid indicating the current and expected failure rate of cartridges supplied under this contract.

*Additional language regarding Special Provisions, Packaging & Packing, Technical Specifications, etc. is provided on Source website.

Source: <http://www.metrokc.gov/procure/green/tonecart.htm>

Recommended Language: If available, utilize recycled/remanufactured toner cartridges specifications through existing contract with Corporate Express or City's office supply contractor. Utilize language from Example 1 above if a separate contract is required to provide greater range of products or availability.

Carpet

Example: The carpet and installation materials must be Carpet and Rug Industry (CRI) Green Label certified OR meet State of California Gold Sustainable Carpet Standards.

All carpet sold to the City of San Diego must contain 15% or more recycled face fiber materials and 60% recycled material backing. The contractor must provide a written certification signed by the manufacturer's President or CEO that **all their carpet products** sold to the City of San Diego has these recycled material percentages. The offeror will provide industry documentation and manufacturer literature supporting the content percentages. The City of San Diego will randomly test the awarded firm's carpet content to verify the amount of recycled materials. The City of San Diego may terminate for default the award for failure to provide recycled materials.

All carpet sold to the City of San Diego must have a 25% or more face fiber of recyclable material and 100% recyclable material backing that, after discarded by the City of San Diego, will be recycled into another carpet product. The contractor must provide a recycling service to include the pick-up of all discarded City of San Diego carpet from the City of San Diego locations listed. This service includes any manufacturer's carpet products.

<http://www.scscertified.com/sustainablechoice/>

Source: EPA Database of Environmental Information for Products and Services

[http://yosemite1.epa.gov/oppt/eppstand2.nsf/ef1431c4615697008525676100775eca/ea41eb15efef49588525696c0068c045/\\$FILE/carpet2.pdf](http://yosemite1.epa.gov/oppt/eppstand2.nsf/ef1431c4615697008525676100775eca/ea41eb15efef49588525696c0068c045/$FILE/carpet2.pdf)

Other Resources:

- 1) Alameda County, "A Resource Guide for Environmentally Preferable Products"
www.stopwaste.org/docs/resource_guide_for_ep_products_3-06.pdf
- 2) Green California Environmentally Preferable Purchasing website:
www.green.ca.gov/EPP/sources/products.htm
- 3) EPA Environmentally Preferable Purchasing website: <http://www.epa.gov/oppt/epp/>
- 4) Responsible Purchasing Network: <http://www.responsiblepurchasing.org/index.php>