

## STANDARD TERMS AND CONDITIONS

Request For Bids/Proposals/Contracts

Dane County Purchasing Division

Rev. 11/17

1.0 **APPLICABILITY:** The terms and conditions set forth in this document apply to Requests for Proposals (RFP), Bids and all other transactions whereby the County of Dane acquires goods or services, or both.

1.1 **ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract, including any purchase order, awarded as a result of this request. Special requirements of a resulting contract may also apply. Said written contract with referenced parts and attachments shall constitute the entire agreement, and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the County. Unless otherwise stated in the agreement, these standard terms conditions supersede any other terms and/or conditions applicable to this agreement.

1.2 **DEFINITIONS:** As used herein, "vendor" includes a provider of goods or services, or both, who is responding to an RFP or a bid, and "bid" includes a response to either an RFP or a bid.

2.0 **SPECIFICATIONS:** The specifications herein are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability or performance level, or any combination thereof, desired. When alternates are proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Dane County shall be the sole judge of equivalency. Vendors are cautioned to avoid proposing alternates to the specifications that may result in rejection of their bid.

3.0 **DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from terms, conditions, or specifications shall be described fully in writing, signed, and attached to the bid. In the absence of such statement, the bid shall be accepted as in strict compliance with all terms, conditions, and specifications and vendor shall be held liable for injury resulting from any deviation.

4.0 **QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. No pre-owned, obsolete, discontinued or defective materials may be used.

5.0 **QUANTITIES:** The quantities shown herein are based on estimated needs. The County reserves the right to increase or decrease quantities to meet actual needs.

6.0 **DELIVERY:** Deliveries shall be FOB destination freight prepaid and included unless otherwise specified. County will reject shipments sent C.O.D. or freight collect.

7.0 **PRICING:** Unit prices shown on the bid shall be the price per unit of sale as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid evaluation and contract administration.

7.1 Prices established in continuing agreements and term contracts may be lowered due to market conditions, but prices shall not be subject to increase for the term specified in the award. Vendor shall submit proposed increases to the Purchasing Division thirty (30) calendar days before the proposed effective date of the price increase. Proposed increases shall be limited to fully documented cost increases to the vendor that are demonstrated to be industry wide. Price increases may not be granted unless they are expressed in bid documents and contracts or agreements.

7.2 Submission of a bid constitutes bidder's certification that no financial or personal relationship exists between the bidder and any county official or employee except as specially set forth in writing attached to and made a part of the bid. The successful bidder shall disclose any such relationship which develops during the term of the contract.

8.0 **ACCEPTANCE-REJECTION:** Dane County reserves the right to accept or reject any or all bids, to waive any technicality in any bid submitted and to accept any part of a bid as deemed to be in the best interests of the County. Submission of a proposal or a bid constitutes the making of an offer to contract and gives the County an option valid for 60 days after the date of submission to the County.

8.1 Bids **MUST** be dated and time stamped by the Dane County Purchasing Division Office on or before the date and time that the bid is due. Bids deposited or time stamped in another office will be rejected. Actual receipt in the office of the purchasing division is necessary; timely deposit in the mail system is not sufficient. **THERE WILL BE NO EXCEPTIONS TO THIS POLICY.**

9.0 **METHOD OF AWARD:** Award shall be made to the lowest responsible responsive bidder conforming to specifications, terms, and conditions, or to the most advantageous bid submitted to the County on a quality versus price basis.

10.0 **ORDERING/ACCEPTANCE:** Written notice of award to a vendor in the form of a purchase order or other document, mailed or delivered to the address shown on the bid will be considered sufficient notice of acceptance of bid. A formal contract containing all provisions of the contract signed by both parties shall be used when required by the Dane County Purchasing Division.

11.0 **PAYMENT TERMS AND INVOICING:** Unless otherwise agreed, Dane County will pay properly submitted vendor invoices within thirty (30) days of receipt of goods and services. Payment will not be made until goods or services are delivered, installed (if required), and accepted as specified. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order.

11.1 **NO WAIVER OF DEFAULT:** In no event shall the making of any payment or acceptance of any service or product required by this Agreement constitute or be construed

as a waiver by County of any breach of the covenants of the Agreement or a waiver of any default of the successful vendor, and the making of any such payment or acceptance of any such service or product by County while any such default or breach shall exist shall in no way impair or prejudice the right of County with respect to recovery of damages or other remedy as a result of such breach or default.

12.0 TAXES: The County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The State of Wisconsin Department of Revenue has issued tax exempt number ES41279 to Dane County.

12.1 The County is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. The County is exempt from Wisconsin sales or use tax on these purchases. The County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Vendors performing construction activities are required to pay state use tax on the cost of materials.

13.0 GUARANTEED DELIVERY: Failure of the vendor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the vendor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include administrative costs.

14.0 APPLICABLE LAW AND VENUE: This contract shall be governed under the laws of the State of Wisconsin, and venue for any legal action between the parties shall be in Dane County Circuit Court. The vendor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.

15.0 ASSIGNMENT: No right or duty in whole or in part of the vendor under this contract may be assigned or delegated without the prior written consent of Dane County.

16.0 NONDISCRIMINATION/AFFIRMATIVE ACTION: During the term of this Agreement the vendor agrees, in accordance with sec. 111.321, Wis. Stats., and Chapter 19 of the Dane County Code of Ordinances, not to discriminate against any person, whether an applicant or recipient of services, an employee or applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The vendor shall provide a harassment-free work environment. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, including apprenticeships, rates of pay or other forms of compensation.

16.1 Vendors who have twenty (20) or more employees and a contract of twenty thousand dollars (\$20,000) or more must submit a written affirmative action plan to the County's Contract Compliance Officer within fifteen (15) working days of the effective date of the contract. The County may elect to

accept a copy of the current affirmative action plan filed with and approved by a federal, state or local government unit.

16.2 The vendor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this Agreement as they relate to affirmative action and nondiscrimination.

16.3 Failure to comply with these Terms and Conditions may result in the vendor being debarred, termination of the contract and/or withholding of payment.

16.4 The vendor agrees to furnish all information and reports required by Dane County's Contract Compliance Officer as the same relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine compliance with Chapter 19, D.C. Ords. and the provisions of this Agreement.

16.5 AMERICANS WITH DISABILITIES ACT: The vendor agrees to the requirements of the ADA, providing for physical and programmatic access to service delivery and treatment in all programs and activities.

17.0 PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT: The vendor guarantees goods sold to the County were manufactured or produced in accordance with applicable federal labor laws, and that the sale or use of the articles described herein do not infringe any patent, copyright or trademark. The vendor covenants that it will, at its own expense, defend every suit which shall be brought against the County (provided that such vendor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent, copyright or trademark by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

18.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to the County must fully comply with all safety requirements as set forth by the Wisconsin Department of Commerce and all applicable OSHA Standards.

18.1 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29 CFR 1910.1200, provide one (1) copy of the Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

19.0 WARRANTY: Unless specifically expressed otherwise in writing, goods and equipment purchased as a result of this request shall be warranted against defects by the vendor for one (1) year from date of receipt. An equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the vendor.

## 20.0 INDEMNIFICATION & INSURANCE.

20.1 Vendor shall indemnify, hold harmless and defend County, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which County, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of vendor furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply

to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of County, its agencies, boards, commissions, officers, employees or representatives. The obligations of vendor under this paragraph shall survive the expiration or termination of this Agreement.

20.2. In order to protect itself and County its officers, boards, commissions, agencies, agents, volunteers, employees and representatives under the indemnity provisions of the subparagraph above, vendor shall, at vendor's own expense, obtain and at all times during the term of this Agreement keep in full force and effect the insurance coverages, limits, and endorsements listed below. When obtaining required insurance under this Agreement and otherwise, vendor agrees to preserve County's subrogation rights in all such matters that may arise that are covered by vendor's insurance. Neither these requirements nor the County's review or acceptance of vendor's certificates of insurance is intended to limit or qualify the liabilities or obligations assumed by the vendor under this Agreement. The County expressly reserves the right to require higher or lower insurance limits where County deems necessary.

20.2.1. Commercial General Liability.

Vendor agrees to maintain Commercial General Liability insurance at a limit of not less than \$1,000,000 per occurrence. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent vendors and Subcontractors, and Fire Legal Liability. The policy shall not exclude Explosion, Collapse, and Underground Property Damage Liability Coverage. The policy shall list DANE COUNTY as an Additional Insured.

20.2.2. Commercial/Business Automobile Liability.

Vendor agrees to maintain Commercial/Business Automobile Liability insurance at a limit of not less than \$1,000,000 Each Occurrence. Vendor further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event vendor does not own automobiles, vendor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

20.2.3. Environmental Impairment (Pollution) Liability

Vendor agrees to maintain Environmental Impairment (Pollution) Liability insurance at a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided.

20.2.4. Workers' Compensation.

Vendor agrees to maintain Workers Compensation insurance at Wisconsin statutory limits.

20.2.5. Umbrella or Excess Liability.

Vendor may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability.

vendor agrees to list DANE COUNTY as an "Additional Insured" on its Umbrella or Excess Liability policy.

20.3. Upon execution of this Agreement, vendor shall furnish County with a Certificate of Insurance listing County as an additional insured and, upon request, certified copies of the required insurance policies. If vendor's insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the date of this Agreement, the Certificate of Insurance shall state that professional malpractice or errors and omissions coverage, if the services being provided are professional services coverage is claims-made and indicate the retroactive date, vendor shall maintain coverage for the duration of this Agreement and for six (6) years following the completion of this Agreement. Vendor shall furnish County, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage. It is further agreed that vendor shall furnish the County with a 30-day notice of aggregate erosion, in advance of the Retroactive Date, cancellation, or renewal. It is also agreed that on claims-made policies, either vendor or County may invoke the tail option on behalf of the other party and that the extended reporting period premium shall be paid by vendor. In the event any action, suit or other proceeding is brought against County upon any matter herein indemnified against, County shall give reasonable notice thereof to vendor and shall cooperate with vendor's attorneys in the defense of the action, suit or other proceeding. Vendor shall furnish evidence of adequate Worker's Compensation Insurance. In case of any sublet of work under this Agreement, vendor shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of vendor. In case of any sublet of work under this Agreement, vendor shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of vendor.

20.4. The parties do hereby expressly agree that County, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this Agreement, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by County's Risk Manager taking into account the nature of the work and other factors relevant to County's exposure, if any, under this Agreement.

21.0 CANCELLATION: County reserves the right to terminate any Agreement due to non-appropriation of funds or failure of performance by the vendor. This paragraph shall not relieve County of its responsibility to pay for services or goods provided or furnished to County prior to the effective date of termination.

22.0 PUBLIC RECORDS ACCESS: It is the intention of the County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid openings are public unless otherwise specified. Records are not available for public inspection prior to issuance of the notice of intent to award or the award of the contract. Bid results may be obtained by visiting the Dane County Purchasing Office Monday – Friday, between 8:00 a.m. and 4:00 p.m. Prior appointment is advisable.

22.1 PROPRIETARY INFORMATION: If the vendor asserts any of its books and records of its business practices and other matters collectively constitute a trade secret as that term is defined in s. 134.90(1)(c), Wis. Stats., County will not release such records to the public without first notifying the

vendor of the request for the records and affording the vendor an opportunity to challenge in a court of competent jurisdiction the requester's right to access such records. The entire burden of maintaining and defending the trade secret designation shall be upon the vendor. The vendor acknowledges and agrees that if the vendor shall fail, in a timely manner, to initiate legal action to defend the trade secret designation or be unsuccessful in its defense of that designation, County shall be obligated to and will release the records.

22.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which vendor believes qualifies as a trade secret, as provided in section 19.36(5), Wis. Stats., must be identified on a designation of Confidential and Proprietary Information form. Pricing will not be held confidential after award of contract.

22.3 Data contained in a bid, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations shall be the property of the County.

23.0 RECYCLED MATERIALS: Dane County is required to purchase products incorporating recycled materials whenever technically and economically feasible. Vendors are encouraged to bid products with recycled content which meet specifications.

24.0 PROMOTIONAL ADVERTISING: Reference to or use of Dane County, any of its departments or sub-units, or any county official or employee for commercial promotion is prohibited.

25.0 ANTITRUST ASSIGNMENT: The vendor and the County of Dane recognize that in actual economic practice, overcharges resulting from antitrust violation are in fact usually borne by the Purchaser. Therefore, the successful vendor hereby assigns to the County of Dane any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

26.0 RECORDKEEPING AND RECORD RETENTION-COST REIMBURSEMENT CONTRACTS: Where payment to the vendor is based on the vendor's costs, vendor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. The County contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the vendor. The vendor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

27.0 LIVING WAGE REQUIREMENT: The vendor shall, where appropriate, comply with the County's Living Wage requirements as set forth in section 25.12, Dane County Ordinances.

27.01 In the event its payroll records contain any false, misleading or fraudulent information, or if the vendor fails to comply with the provisions of s. 25.12, D.C. Ords., the County may withhold payments on the contract, terminate, cancel or suspend the contract in whole or in part, or, after a due process hearing, deny the vendor the right to participate in

bidding on future County contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second violation is found.

27.02 Bidders are exempt from the requirement of this section if:

- The maximum value of services to be provided is less than \$5,000;
- The bid involves only the sale of goods to the County;
- The bid is for professional services;
- The bid is for a public works contract where wages are regulated under s. 62.293, Wis. Stats.;
- The bidder is a school district, a municipality, or other unit of government;
- The service to be provided is residential services at an established per bed rate;
- The bidder's employees are persons with disabilities working in employment programs and the successful bidder holds a current sub-minimum wage certificate issued by the U.S. Department of Labor or where such a certificate could be issued but for the fact that the employer is paying a wage higher than the minimum wage;
- The bidder is an individual providing services to a family member; or
- The bidder's employees are student interns.

27.03 COMPLIANCE WITH FAIR LABOR STANDARDS. During the term of this Agreement, vendor shall report to the Controller, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations commission (WERC) that vendor has violated a statute or regulation regarding labor standards or relations within the seven years prior to entering this Agreement. If an investigation by the Controller results in a final determination that the matter adversely affects vendor's responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this agreement, the County may take such action.

27.04 VENDOR may appeal any adverse finding by the Controller as set forth in sec. 25.08(20)(c) through (e).

27.05 VENDOR shall post the following statement in a prominent place visible to employees: "As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing."