

When specified in any bid or RFP document, the following standard terms and conditions shall apply:

- A. SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Kenosha County shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- B. ACCEPTANCE OF BID/PROPOSAL CONTENT:** The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.
- C. DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications of this request and the bidders/proposers shall be bound to the provisions.
- D. QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by Kenosha County.
- E. DELIVERY:** Deliveries shall be F.O.B. to the destination listed on the purchase order or contract. Title and risk of loss of goods shall not pass to the County of Kenosha until receipt and acceptance takes place at the FOB point. Contractor will be responsible to deliver to the destination shown on the purchase order, with inside delivery required at no additional charge to Kenosha County.
- F. PRICING AND DISCOUNT:**
- a) Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) 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/proposal evaluation and contract administration.
 - b) In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least Thirty (30) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
 - c) Pricing errors, bids or proposals having any erasures or corrections must be initialed by the bidder/proposer in ink (preferably blue). Corrections without the signee's initials shall be considered a no bid for that item.
- G. UNFAIR SALES ACT:** Prices quoted to Kenosha County are not governed by the Unfair Sales Act.
- H. ACCEPTANCE-REJECTION:** Kenosha County reserves the right to accept or reject any or all bids/proposals or to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal, as deemed to be in the best interests and sole discretion of Kenosha County.
- I. LATE BIDS:** Bids are due on or before the date specified in this document. Late bids will not be accepted. All bids and proposals must be delivered to and stamped in by the Purchasing Division. The responsibility for submitting bids to the Kenosha County Purchasing Division on or before the stated time and date is solely that of the respondent. The County will in no way be responsible for delays of any kind in mail/package delivery or delays caused by any other occurrence.
- Bids/proposals MUST be date and time stamped by the Kenosha County Purchasing Division on or before the date and time that the bid is due. Any bid that is date and time stamped in another office will not be accepted by the Purchasing Division. Receipt of a bid/proposal by the County's internal mail system does not constitute receipt of a bid/proposal by the Purchasing Division.
- J. METHOD OF AWARD:** Bid awards shall be made to the lowest responsible, responsive bidder unless otherwise specified. Proposal awards will be made to the responsible offeror whose bid or proposal is most advantageous to the County of Kenosha, price and other factors considered. Award will be made by the County Purchasing Director (or designee).
- K. PAYMENT TERMS AND INVOICING:** Payments on this contract shall be made by check by Kenosha County upon satisfactory performance of service and submission of invoice to the County. Kenosha County usually will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- a) Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
 - b) A good faith dispute creates an exception to prompt payment.

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- L. TAXES:** Kenosha County is exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.
- a) Kenosha 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. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- M. No Reimbursement for Expense of Bidding:** Kenosha County will not reimburse vendors for any costs associated with the preparation and submittal of any bid or proposal, nor for any travel and/or per diem costs if any are incurred.
- N. GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include Kenosha County's administrative costs to retain such replacement.
- O. TERMINATION FOR DEFAULT:** Failure of the awardee to perform any of the provisions of this contract shall constitute a breach of contract, in which case, the county may require corrective action within ten days (10) from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a written reply within the prescribed 10 days shall constitute a default of the contract. If defaulted, the contractor shall be liable for liquidated damages, if any. Kenosha County reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach of default of this contract, and may contract with another party with or without solicitation of proposals or further negotiations. As a minimum, contractor shall be required to pay any difference in the cost of securing the products or services covered by this contract, or compensate for any loss to county should it become necessary to contract with another source because of this default, plus reasonable administrative costs, reasonable attorney's fees, court cost and expenses.
- P. TERMINATION FOR CONVENIENCE:** Upon seven (7) calendar days written notice delivered by first class post paid United States Mail, to the address indicated in the proposal/bid, to the successful bidder/proposer, Kenosha County may without cause and without prejudice to any other right to remedy, terminate the agreement for Kenosha County's convenience whenever Kenosha County determines that such termination is in the best interest of the county. Where the agreement is terminated for convenience of Kenosha County the notice of termination must state that the contract is being terminated to the convenience of Kenosha County under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor shall promptly discontinue all work at the time and to the extent indicated on the notice of termination. The contractor shall also terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the contract and refrain from placing further orders and subcontracts except, as they may be necessary and complete any continued portions of the work.
- Q. NON-APPROPRIATION OF FUNDS:** Kenosha County states that it is our intent to make all payments required to be made under any Agreement resulting from this ITB/RFP. However, in the event Kenosha County's legislative body, the Kenosha County Board of Supervisors, does not appropriate funds for the continuation of the Agreement for any fiscal year after the first fiscal year, and it has no funds to continue the Agreement from other sources, said agreement will be terminated without damages or cost for such termination.
- R. BACKGROUND CHECKS:** All employees of the contracted vendor who service equipment or perform work in a county facility under this contract may be required to submit to a criminal records background check or security check on a case-by-case basis before allowed access to the facility. Vendor will be required to submit any requested identifying information for each technician, employee or subcontractor and must provide an updated list of technicians, employees or subcontractors to the Contract Manager whenever a change in staff occurs.
- S. PUBLICITY RELEASES:** Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by Kenosha County. The contractor shall not have the right to include the County's name in its published list of customers without prior written approval of Kenosha County. The contractor further agrees not to publish, publicize, verbalize, print, tape, film, email, internet communication or any other electronic communication or cite in any form, any comments or quotes from County staff.
- T. ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, acknowledgment, or invoice shall be effective or binding unless expressly agreed to in writing by Kenosha County. Any attempt to alter or change the terms and conditions of the bid/proposal document without prior written authorization by the Kenosha County shall be cause for termination of the contract at the discretion of the County.
- U. APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin; venue shall be in Kenosha County. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, rules and regulations. Kenosha County also reserves the right to cancel this contract if the County learns the contractor is debarred from a local governmental entity, the State of Wisconsin or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from local or federal procurement and non-procurement contracts.

- V. ANTITRUST COMPLIANCE:** Those parties contracting with the County, or submitting bids under this Invitation to Bid, certify that with respect to all aspects of this bid and any subsequent agreement they have complied and will comply with all Federal and State Anti-Trust and Restraint of Trade laws and regulations. FURTHERMORE, said party agrees to defend and hold harmless the County of Kenosha against any claims to the contrary.
- W. ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of Kenosha County.
- X. PATENT, COPYRIGHT, TRADEMARK OR SOFTWARE LICENSE INFRINGEMENT:** The contractor selling to Kenosha County the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent, copyright, trademark or software license. The contractor covenants that it will at its own expense defend every suit which shall be brought against Kenosha County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent, copyright, trademark or software license by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and judgments, orders reasonable expenses, reasonable attorney fees in defense of such actions, in any such suit.
- Y. SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to Kenosha County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards. The equipment or chemicals you would supply to Kenosha County must comply with all requirements and standards as specified by the Occupational Safety and Health Administration and Wisconsin Department of Commerce. All guards and protectors as well as appropriate markings must be in place before delivery. Items not meeting current regulatory specifications will be refused. The supplier may be required to provide training to County employees in the operation and handling of the item and its maintenance, at the supplier's expense and at the convenience of the County.
- Z. WARRANTY:** The equipment manufacturer's standard warranty shall also apply as a minimum warranty and must be honored by the contractor. If there are no standard manufacturer's warranties and unless otherwise specifically stated by the bidder/proposer, equipment, materials, products purchased as a result of this request shall be warranted against defects by the bidder/proposer for a minimum of one (1) year from date of receipt.
- AA. PUBLIC RECORD LAW COMPLIANCE:** It is the intention of Kenosha County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid / proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.
- a) The Parties acknowledge that Kenosha County is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see sections 19.32-19.39 & 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws. To comply with any request under said Public Record Law, the provider/contractor herein shall produce copies of all materials gathered or produced or modified pursuant to this contract to Kenosha County, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit. According to Wisconsin case law, even if records are created or maintained by, or in the custody of, the provider as an independent contractor, they, along with the raw data used to create the record, are nevertheless public records that must be made available to the public within a reasonable time and without delay upon request by any person, and in the format in which they were created. Provider/contractor agrees to hold Kenosha County, its agents, officials and employees harmless and to indemnify them and Kenosha County for all costs, fees, including all reasonable attorney fees and expense of all kinds, and any judgments, orders, injunctions, writs of mandamus, and damages or expense of whatever kind for which Kenosha County or its agents, officials or employees may expend or be held liable due to the Provider/contractor's failure to comply with the Wisconsin Public Records and Open Meetings laws, or with this agreement.
- b) Any Public Record Law request received directly by a contractor related to this contract with Kenosha County shall immediately be reported to the contract manager for the County.
- BB. PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request or a contract, must be clearly stated in the bid/proposal or contract itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin Public Records Law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.
- a) Data contained in a bid / proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data obtained and all documentation, and innovations developed as a result of the bid / proposal process and or contract shall become the property of Kenosha County.

- b) Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form obtained from the Kenosha County Purchasing Division. Bidders / proposers may request the form if it is not part of the Invitation for Bid / Request for Proposal package. Bid / proposal prices cannot be held confidential.

CC. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS

In the performance of work under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees of the Contractor and applicants for employment, notices setting forth the provisions of the non-discriminatory clause.

Contractor is an individual and/or small business. The Equal Employment Opportunity Commission has promulgated specific guidelines governing equal employment responsibilities in this context (known as "contingent employment"), and consistent with this approach, the Department of Labor has expressly excluded temporary employees from the EEO-1 reporting requirements. Accordingly, in compliance with these guidelines, Kenosha County has promulgated internal policies and procedures designed to ensure that contingent workers are hired and placed based solely upon their qualifications.

When a violation of the non-discrimination, equal opportunity or affirmative action provisions of this section has been determined by the County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations. If, after notice of a violation to Contractor, further violations of this section are committed during the term of the Contract, the County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract but, in either event, Contractor may be ineligible to participate in future contracts with the County.

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

EE. FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the United States government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

FF. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

- a) The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- b) Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and
- c) No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.
- d) Each person signing this bid/proposal certifies that: He/she is the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 31(a) through 31(c) above; (or)
 - i) He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 31(a) through 31(c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 31(a) through 31(c) above.

GG. RECORD KEEPING AND RECORD RETENTION: The contractor 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. All procedures must be in accordance with federal, state and local ordinances.

- a) Kenosha County 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 contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

HH. INDEPENDENT CAPACITY OF CONTRACTOR: The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the county. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the county.

II. PERMITS AND INSPECTION: When required any and all permits and inspections shall be included in the bid price and shall not be an additional cost to the County.

JJ. OPTIONAL COOPERATIVE PURCHASING AGREEMENT: It is intended that any other public agency (i.e., city, county, district, public agency, municipality or state agency) shall have the option to participate (A.K.A. "join" or "piggyback") in any award made as a result of this solicitation under the same terms and conditions. The County of Kenosha shall incur no financial responsibility in connection with purchase orders or contracts made by the bidder with another public agency resulting from this solicitation. The public agency utilizing the original contract shall accept sole responsibility for placement of orders and applicable payments to the vendor. Should the Bidder not wish for a contract resulting from this bid to be used by other public agencies, they have the option to decline at the time of request.

KK. ORDER SEQUENCE FOR BID/PROPOSAL DOCUMENTS: In the event that any information is listed in this document more than once, the order of document sequence listed below prevails:

- a) All Standard Terms and Conditions are superseded by
- b) Special Terms and Conditions, are superseded by
- c) The Specifications.