

**COUNTY OF SONOMA
PURCHASING DIVISION
400 AVIATION BLVD., STE. 100 SANTA
ROSA, CA 95403**

STANDARD TERMS AND CONDITIONS FOR BIDS

The following terms and conditions are applicable to bids for goods only. Requests for Proposals (RFP's) and other solicitations will have draft contracts with associated terms and conditions included in the solicitation.

1.0 GENERAL REQUIREMENTS

- 1. SUPPLIER REGISTRATION:** Prior to the opening of this bid, ***ALL*** entities submitting a bid must be registered on Sonoma County's Supplier Portal; the County reserves the right to reject the bid of any non-registered entity. Register online at <https://esupplier.sonomacounty.ca.gov>
- 2. DELIVERY:** Suppliers are to state the delivery time in their bid. Sonoma County requires that Suppliers deliver all products "free on board" (F.O.B.) to final destination.

BID DELIVERY: Bidders must submit their bid electronically to the County of Sonoma's Supplier Portal at <https://esupplier.sonomacounty.ca.gov>. Hard copy, faxed, and/or emailed submissions will not be accepted.

2.0 GENERAL CONDITIONS FOR SUBMITTING A BID

(In addition to the following general conditions, successful Supplier will be bound by the County's Standard Terms and Conditions for Purchase Orders and Blanket Purchase Orders, which are contained herein, and which will be included with any resulting Purchase Order and Blanket Purchase Order.)

- 1. PREPARATION OF BIDS:**
 - (a) Brand names and numbers when given in Invitations for Bids ("IFB") are for reference only. Bids on equal items will be considered, provided the bid clearly describes the article offered and it is equal in quality and utility unless otherwise stated in IFB.

- (b) State brand, or make, on each item. If quoting on other than the make, model, or brand specified in the IFB, the manufacturer's name and catalog number must be given, and catalog cut with information attached to the bid.
- (c) Bid on each item separately. Prices should be stated in units specified in IFB. Time of delivery is a part of the bid and must be adhered to. If it is impossible to meet delivery specified in IFB, Supplier shall state best delivery possible for each item. Time, if stated as a number of days, shall mean "calendar" days.
- (d) A responsible officer or employee must sign all non-electronically submitted bids with the firm name. Obligations assumed by such signature must be fulfilled.

2. TAXES, CHARGES AND EXTRAS:

- (a) Unless otherwise definitely specified, the prices bid herein shall not include sales tax, use tax or any other taxes.
- (b) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, except taxes legally payable by the County, will be paid by the County unless expressly included and itemized in the bid.
- (c) The County does not pay Federal excise taxes. Do not include these taxes in your bid price. Do indicate on face of bid, however, the amount of any such tax. The County will furnish an exemption certificate in lieu of such tax.
- (d) Merchandise will not be accepted if shipped C.O.D.

3. AWARD:

- (a) Unless the Supplier specifies otherwise in their bid or the IFB states otherwise, prices bid shall be guaranteed firm for ninety (90) days.
- (b) Unless the Supplier specifies otherwise in their bid or the IFB states otherwise, the County may at its sole discretion award based on line item, any group of items, or on an all or none basis if it is deemed to be most beneficial to the County.
- (c) The County reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.
- (d) A written Purchase Order emailed, mailed, or otherwise furnished, to the successful Supplier within the time for acceptance specified is a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
- (e) Because of clerical workload the Purchasing Division cannot notify Suppliers of bid results. However, bid results will be available for inspection in the Purchasing Division.

4. ALTERATION OR VARIATION OF TERMS:

It is mutually understood and agreed that no alteration or variation of the terms in this bid shall be valid unless made or confirmed in writing and signed by the parties hereto, and that no oral understanding and agreements not incorporated herein, and no alterations or variations of the terms hereof unless made or confirmed in writing between the parties hereto shall be binding on any of the parties hereto.

5. PROCUREMENT OF RECYCLED PRODUCTS:

The County of Sonoma is committed to the procurement and use of recycled goods, which would contribute to the conservation, and protection of resources necessary to maintain a quality environment. It is the commitment of Sonoma County to help expand the market for recycled products and to serve as a model for private purchasers. To this end the Sonoma County Purchasing Agent shall seek every opportunity to promote the County's interest in procuring recycled products. It is the policy of Sonoma County to procure goods which are composed of the highest percentage of recovered materials practicable, so long as the products are reasonably available, meet reasonable performance standards, and are available at a reasonable price. The Purchasing Agent is given authority to specify recycled products for direct preferential purchase if the cost differential is not greater than 5 percent or as otherwise provided for in State statute.

A bidder offering recycled product(s) must indicate the following:

- (a) Item or items manufactured from recycled materials.
- (b) Minimum percentage of recovered or post consumer recovered materials.

COUNTY OF SONOMA STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS AND BLANKET PURCHASE ORDERS

1. Payment Terms.

1.1 Price. No changes in price, quantity or merchandise will be recognized by the County without written notice of acceptance thereof by the Purchasing Agent prior to the shipment of goods or installation of the materials or performance of services. No charge will be allowed for packing, boxing, or cartage, except when otherwise specified in this contract. The County is exempt from the payment of federal excise tax. Therefore federal excise tax shall not be included in the price of the goods. Unless otherwise specified, Supplier hereby understands and acknowledges that the prices d herein do not include California Sales and Use Tax or Sonoma County Sales and Use Tax.

1.2 Cash Discounts. In connection with any cash discount specified in this contract, time will be computed from the date of completed delivery of the goods or the completion of the performance of services as specified, or from the date that correct invoices are received if the latter date is later than the date of delivery and/or performance. For the purpose of earning the discount, payment shall be deemed to have been made on the date of mailing of the County warrant or check.

1.3 Invoices. Upon submission of itemized invoices in duplicate, payment shall be made of the prices stipulated herein for goods or materials delivered or services rendered and accepted less deductions, if any, as herein provided. Payment on partial deliveries or services may be made whenever amounts due so warrant or when requested by the Supplier and approved by the Purchasing Agent.

2. Requirements Concerning Goods.

2.1 Shipment.

2.1.1 Delivery. Supplier shall deliver the goods in accordance with the delivery schedule set forth in this contract. If the time for delivery is stated as a number of days, it shall mean calendar days. Goods will not be accepted if shipped C.O.D. Title to the goods purchased hereunder shall pass to the County at the F.O.B. point designated on the face hereof, subject to the County's right to reject the goods.

2.1.2 Inspection. The County shall have the right to inspect the goods prior to payment and acceptance. Notwithstanding anything stated to the contrary herein, if on inspection, the County determines that the goods do not conform to the contract requirements, the County shall have the right to preserve and keep, at no expense to the County, a small sample of the goods tendered for the purpose of having evidence of the tendered goods' kind and quality.

2.1.3 Risk of Loss. The risk of loss of the goods shall not pass to County until County actually receives and accepts the goods from Supplier.

2.2 Force Majeure. The County shall not be liable for failure to take delivery of the goods attributable to any of the causes specified in this paragraph if they render it commercially impractical for the County to receive the goods. When either Supplier or the County claims an excuse for nonperformance under this paragraph, they must give reasonable notice to the other party.

3. Performance of Services.

3.1 Standard of Care. Supplier shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Supplier's trade or profession. Supplier hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Supplier's work by County shall not operate as a waiver or release.

3.2 Assigned Personnel. Supplier shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Supplier to perform work hereunder, Supplier shall remove such person or persons immediately upon receiving written notice from County.

3.3 Completion. Supplier shall perform the services described in this contract within the time or dates set forth herein.

3.4. Insurance. With respect to performance of work under this contract, Supplier shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as follows:

3.4.1 Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California and Employers' Liability with limits of 1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy;

3.4.2 General Liability insurance on a standard occurrence form, no less broad than ISO form CG 00 01 with minimum limits of \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The County of Sonoma, Sonoma County Water Agency, Sonoma County Agricultural Preservation and Open Space District, their officers, agents and employees shall be additional insureds for liability arising out of distribution of Supplier's products (ISO endorsement CG 20 15 – "Additional Insured/Suppliers" – or equivalent). Additional insured status shall continue for

(1) year after delivery of product(s). The insurance provided to County, et al. as additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self- insurance program maintained by them.

3.4.3 Automobile Liability Insurance with minimum limits of \$1,000,000 combined single limit per accident. Coverage shall apply to all owned, hired and non-owned vehicles.

3.4.4 Documentation and Material Breach: County, at its sole discretion, may require Supplier to submit Certificates of Insurance, endorsements and other documentation of the required insurance. Upon County's written request, Certificates of Insurance and/or endorsements shall be provided within seven (7)

days of County's request. Certified copies of insurance policies shall be submitted within thirty (30) days of County's request. Supplier's indemnity and other obligations shall not be limited by the foregoing insurance requirements. If Supplier, for any reason, fails to maintain insurance coverage, which is required pursuant to this contract, the same shall be deemed a material breach of this contract. County, at its sole option, may terminate this contract and obtain damages from Supplier resulting from said breach. Alternatively, County may purchase the required insurance coverage, and without further notice to Supplier, County may deduct from sums due to Supplier any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

3.4.5 Attached Agreement for Services: If an Agreement for Services attached to this contract specifies requirements for insurance, the insurance requirements included in the attached Agreement for Services shall supersede the insurance requirements in this Section

3.5 Representations and Covenants of Supplier.

3.5.1 Status of Supplier. The parties intend that Supplier, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Supplier is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this contract, Supplier expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

3.5.2 Taxes. Supplier agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this contract and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

3.5.3 Records Maintenance. Supplier shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this contract and shall make such documents and records available to County for inspection at any reasonable time. Supplier shall maintain such records for a period of three (3) years following completion of the work hereunder.

4. **Termination**. At any time and without cause, the County shall have the right, in its sole discretion, to terminate this contract by giving five (5) calendar days written notice to Supplier. In the event of such termination, Supplier shall only be entitled to payment for those goods that have been delivered and accepted by the County or services satisfactorily rendered through the date of termination.

5. **Title to Goods**; Infringement. Supplier warrants that it has title to the goods and that they are not subject to a security interest, lien, or other encumbrance. The Supplier shall hold the County, its officers, agents, servants and employees, harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this contract, and agrees to defend, at Supplier's sole

expense, any and all actions brought against the County or the Supplier because of the unauthorized use of such articles.

6. Warranty.

6.1 Warranty for Goods. Supplier warrants to the County and/or County customers that any and all goods covered by this contract will be new unless otherwise specified and will conform to the drawings, specifications, samples, description and time provisions furnished by the County and will be of first-class material and workmanship and free from defect. In the event of a defect, malfunction, or failure of the goods to conform to this warranty, the County shall have the right to require the Supplier to repair or replace the goods without charge within five (5) business days from being notified of the defect. If the Supplier cannot replace the goods and repair either is not commercially practicable or cannot be made within such five (5) business day period, the County shall have the right to require the Supplier to refund the purchase price. Defective goods rejected by the County may, without prejudice to any other legal remedy (including, without limitation, incidental and consequential damages) be held at Supplier's risk and returned to Supplier at Supplier's expense. This warranty shall not be deemed to be waived by the County for any reason, including, without limitation, the County's acceptance of the goods or the County's failure to notify Supplier thereof. Further, the failure of the County to reasonably specify any defects in rejected goods shall not prevent the County from relying on the defect to establish a breach, even though the Supplier could have cured the defect on proper notification.

6.2 Warranty for Services. Supplier warrants to County that any and all materials and equipment furnished under this contract will be new unless otherwise specified and that all services will be of good quality, free from faults and defects and in conformance with the contract. Neither final payment nor inspection of Supplier's services shall constitute an acceptance of services not done in accordance with this contract or relieve Supplier of liability in respect to any express warranties or responsibilities for faulty material or workmanship. Upon request of County, Supplier shall immediately remedy any defects in the services, materials and/or equipment and pay for any damage resulting there from. The County shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the Supplier. In the event the County elects to have said work performed by the Supplier, the Supplier agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the County; however, in no event shall such period exceed fifteen (15) calendar days. If the Supplier shall fail or refuse to comply with its obligations under this section, the County shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

7. **Indemnification.** Supplier agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by County to enforce the indemnity provisions herein, whether arising from personal injury,

property damage or economic loss of any type, that may be asserted by any person or entity, including Supplier, arising out of or in connection with the performance of Supplier hereunder, whether or not there is concurrent negligence on the part of County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of County. If there is a possible obligation to indemnify, Supplier's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. County shall have the right to select its own legal counsel at the expense of Supplier, subject to Supplier's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Supplier or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. **Remedies**. In the event of a default hereunder by the Supplier, County may pursue any one or more of the following remedies:

8.1 **County's Right to Cover**. In the event any item furnished by the Supplier in the performance of this contract should fail to conform to the specifications therefore, or to the same submitted by the Supplier with its bid, the County may reject the same, and require the Supplier to reclaim and remove the same forthwith, without expense to the County, and immediately to replace all such rejected items with others conforming to such specifications or samples; provided that should the Supplier fail, neglect or refuse so to do the County shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the Supplier the difference between the prices named in the contract and the actual cost thereof to the County. In the event the Supplier shall fail to make prompt delivery, as specified of any item, the same conditions as to the rights of the County to purchase in the open market and to reimbursement set forth above shall apply. Cost of inspection of deliveries which do not meet specifications will be the responsibility of the Supplier and will be deducted from any moneys due or that may thereafter become due to the Supplier.

8.2. **County's Right to Terminate this Contract**. Every tender of goods must fully comply with all provisions of this contract and nothing in this contract shall be construed as restricting or limiting the County's right to demand exact performance with respect to each and every installment delivery. County shall have the right to treat any nonconforming installment shipment as a breach of the entire contract and terminate the contract for any such breach. If County pursues this remedy, Supplier shall not have the right to substitute a conforming tender, whether or not the nonconforming delivery may be seasonably cured.

8.3 **County's Right to Incidental Damages**. The County shall be entitled to recover as incidental damages, in addition to those provided for in the Uniform Commercial Code, the following:

- (a) A reasonable rental charge for goods leased while the County effectuates a purchase elsewhere; and
- (b) Any expenses incurred in leasing substitute goods for use until the County procures goods elsewhere.

8.4 Remedies Not Exclusive: The rights and remedies of the County provided hereunder shall not be exclusive and are in addition to any other rights and remedies provided by the law or under this contract.

9. Nondiscrimination. Supplier shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, sexual orientation, gender identity, age, medical condition, pregnancy, disability, or other prohibited basis. In addition, Supplier agrees to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this contract and any extensions of the term. All nondiscrimination rules or regulations required by law to be included in this contract are incorporated by this reference.

10. General Provisions.

10.1 Assignment. No right or interest in this contract may be assigned by Supplier without the written permission of the County, and no delegation of any obligation owed by Supplier may be made without the written permission of the County. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes.

10.2 No Waiver of Breach. The failure of the County to object to the manner of performance of any of the terms of this contract shall not be considered a waiver of any rights or remedies, past, present, or future. The failure of the County to object to a nonconforming performance shall not be construed as an acceptance of or acquiescence in the performance. The County reserves the right to insist upon strict compliance with this contract at all times.

10.3 Applicable Law and Forum. This contract shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this contract or for the breach thereof shall be brought and tried in the County of Sonoma.

10.4 Merger; Modifications. The parties intend this writing to be the final expression of their agreement and it is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even when the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No modification of this contract shall be effective unless and until such modification is evidenced by a writing signed by the Supplier and the Purchasing Agent. In the event of a conflict between these standard terms and conditions and any additional terms and conditions, the provisions of these standard terms and conditions shall prevail over an identified conflicting provision of these standard terms and conditions.

10.5 Construction. To the fullest extent allowed by law, the provisions of this contract shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

10.6 No Suspension or Debarment. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Supplier also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Supplier becomes debarred, Supplier has the obligation to inform the County.

10.7 Federal Provisions. This Agreement may be funded in part or entirely by financial assistance from the Federal Emergency Management Agency. Required terms and conditions are referenced in the attached Exhibit A, if applicable.

11. Sonoma County Living Wage Ordinance

11.1 The contractor/franchisee/economic development assistance recipient shall comply with any and all federal, state, and local laws—including, but not limited to the county of Sonoma living wage ordinance—affecting the services provided by this contract/franchise agreement. Without limiting the generality of the foregoing, the contractor/franchisee/economic development assistance recipient expressly acknowledges and agrees that this contract/franchise/economic development assistance agreement is subject to the provisions of Article XXVI of [Chapter 2](#) of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the contract/franchise/economic development assistance agreement will be considered a material breach and may result in termination of the contract/franchise/economic development assistance agreement or pursuit of other legal or administrative remedies.

Sonoma County's Living Wage Ordinance is not applicable to construction or goods purchases.