



DANE COUNTY
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION

REQUEST FOR BID (RFB)

Revised 02/2020 (G - Highway)

BID NUMBER: **121020**

BID TITLE: **Mastic Pavement Repair**

BID DEADLINE: **January 25, 2021**
2:00 p.m. (CST)

BIDS MUST BE
UPLOADED TO: **Purchasing Bid Dropbox**
www.danepurchasing.com

Late, faxed, mailed, hand-delivered or unsigned bids will be rejected

DIRECT
ALL INQUIRES
TO:

Megan Rogan
Purchasing Officer
608-283-1487
rogan.megan@countyofdane.com
www.danepurchasing.com

BID SUBMISSION CHECKLIST

- Update Vendor Registration
- Read Entire Bid Document

Completed Bid Packet (In PDF Format)

- Section 2 – Vendor Information
- Section 3 – Bid Specifications
- Section 4 – Price Proposal
- Section 5 – Standard Terms & Conditions

- Upload Bid Response to Purchasing Bid Dropbox

DATE ISSUED | December 21, 2020

Section 1 – General Bid Guidelines

1. Introduction

Dane County invites and will accept bids for item(s) outlined within this bid. The County as represented by Purchasing Division, intends to use the results of this process to purchase goods or services here within.

2. Clarification/Questions:

Any questions concerning this bid must be submitted in writing by email at least five working days prior to the bid deadline. Requests submitted after that time will not be considered. All inquiries must be directed to the Purchasing Agent indicated on the cover page.

3. Addendums:

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this bid, addenda and/or supplements will be posted on the Purchasing Division web site at www.danepurchasing.com. Bidders are responsible to regularly monitor the web site for any such postings. It is recommended to check the website for addenda prior to submitting a proposal. Bidders must acknowledge the receipt/review of any addenda on the Vendor Information page.

The Purchasing Division has the sole authority for modifications to specifications and/or this bid document.

4. Vendor Registration Program:

All bidders are strongly encouraged to be a registered vendor with Dane County. Registering allows a vendor the opportunity to receive notifications for bids issued by the County and provides the County with up-to-date company contact information.

Provide your Dane County Vendor # in the Vendor Information section of the bid submission packet.

For Non-Registered Vendors:

Complete vendor registration by visiting www.danepurchasing.com. On the top menu bar, click Vendor Registration and then click Create Vendor Account. You will receive an email confirmation once your account is created and again when your vendor registration is complete. Retain your user name/email address and password for ease of re-registration in future years. Within 2-4 days of completing the registration, a vendor number will be assigned and emailed to you.

For Registered Vendors:

Check to make sure your vendor information including commodity codes is up-to-date by signing into your account at www.danepurchasing.com. On the top menu bar, click Vendor Registration and then click Vendor Log In.

5. Pricing:

The price quoted shall include all labor, materials, equipment, shipping, and other costs. All prices and conditions outlined in the bid shall remain fixed.

6. Bid Submission and Acceptance:

Multiple bids from a vendor will be permissible, however, each proposal must conform fully to the requirements for bid submission. Multiple bid proposals must be submitted separately and labeled as Bid# 1, Bid# 2, etc.

Dane County reserves the right to accept any part of this bid deemed to be in the best interest of the County. The County also retains the right to accept or reject any or all bids.

Proposals must be received in the Purchasing – Bid Dropbox located on the www.danepurchasing.com website no later than the date and time indicated within the RFP Deadline field on the RFP Cover Page or addenda. Late, faxed, mailed, hand-delivered, or unsigned proposals will be rejected unless otherwise specified. Dane County is not liable for any cost incurred by proposers in replying to this RFP.

All proposals must be saved in PDF format unless otherwise specified within the RFP document and the file name shall include the RFP# and name of business submitting proposal.

Example of how to name the files:

120012 – Vendor Name

To Submit a Proposal:

- 1. Go to www.danepurchasing.com and click on Purchasing – Bid Dropbox or click on the Open RFP’s and Bids page link.

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2. Click on the Submit a Bid button within the green Purchasing Bid Dropbox.
3. Type in the Email, First Name, Last Name and Company information and click Continue.
4. Drag and drop the RFP files one at a time into the “Drag files here” box.
5. After all files have been placed into the “Drag files here” box, click on the blue Upload button.
 - a. The file upload status can be seen for each document uploaded.
 - b. After each document reaches 100%, it will say “Uploaded”.
6. Confirm all files have been uploaded and then close out of the window.

Dane County Purchasing strives to post a bid summary to www.danepurchasing.com on the same day as the bid is due. The bid opening is public and can be attended. This bid opening will occur on the date and time noted on the bid cover page. There will be no public bid openings at this time.

7. **Cooperative Purchasing**

Participating in cooperative purchasing gives vendors the opportunity for additional sales without additional bidding. Municipalities and state agencies use cooperative purchasing to expedite purchases. A “municipality” is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats.

On the Vendor Information page, you will have the opportunity to participate in allowing municipalities and state agencies to piggyback this bid. Participation is not mandatory. A vendor’s decision on participating in this service has no effect on awarding the bid.

Dane County is not a party to these purchases or any dispute arising from these purchases and is not liable for delivery or payment of any of these purchases.

8. **Award:**

The County will award the bid to the responsive and responsible bidder whose bid is most advantageous to the County. In determining the most advantageous bid, the County will consider criteria such as, but not limited to, cost, bidder’s past performance and/or service reputation, and service capability, quality of the bidder’s staff or services, customer satisfaction, references, the extent to which the bidder’s staff or services meet the County’s needs, bidder’s past relationship with the County, total long term cost to the County, fleet continuity and any other relevant criteria listed in this solicitation.

Written notice of award to a vendor in the form of a purchase order or other document, mailed or emailed to the address shown on the bid will be considered sufficient notice of acceptance of bid.

This contract and any part thereof shall not be subcontracted or assigned to another Contractor without prior written permission of the County. The Contractor shall be directly responsible for any Subcontractor’s performance and work quality when used by the Contractor to carry out the scope of the job. Subcontractors must abide by all terms and conditions under this Contract.

9. **Payment Terms and Invoicing:**

Unless otherwise agreed, Dane County will pay properly submitted vendor invoices within thirty (30) days of receipt of goods or services. Payment will not be made until goods or services are delivered, installed (if required), and accepted as specified. Invoices presented for payment shall be submitted to the bill to address and/or County Representative listed on the Dane County purchase order. The Dane County purchase order number must be noted on the submitted invoice.

Other incidental or standard industry charges not identified herein, are not allowed under this contract. Miscellaneous service charges used to help the Contractor pay various fluctuating current and future costs are not allowed. These charges include, but are not limited to, costs directly or indirectly related to the environment, energy issues, fuel charges, service and delivery of goods and services.

10. **Permits and Licenses:**

The Contractor selected under this bid shall be required to obtain the necessary permits and licenses prior to performing any work under this contract. The Contractor will be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this contract.

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Contractor must be financially responsible for obtaining all required permits and licenses to comply with pertinent regulations, municipal, county, State of Wisconsin and Federal laws, and shall assume liability for all applicable taxes.

11. **Satisfactory Work:**

Any work found to be in any way defective or unsatisfactory shall be corrected by the Contractor at its own expense at the order of the County. The County also reserves the right to contract out services not satisfactorily completed and to purchase substitute services elsewhere. The County reserves the right to charge the vendor with any or all costs incurred or retain/deduct the amount of such costs incurred from any monies due or which may become due under this contract.

12. **Government Standards:**

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. Bidders shall comply with all local, state and federal regulations, directives and laws.

13. **Warranty:**

The length, time, and conditions of warranty must be attached to or stated in the bid document. The seller and/or manufacturer warrants that the goods sold hereunder will be merchantable quality, will conform to applicable specifications, and will be free from defects in material and workmanship and will be fit for the particular purpose intended.

Warranty does not commence until after the complete unit has been accepted and placed into service by the user agency. Bidder shall indicate the name and the geographical location of the nearest authorized dealer to perform subsequent warranty service. This information shall be stated in the pricing section of bid or otherwise specified.

14. **Dane County Sustainability Principles:**

On October 18, 2012, the Dane County Board of Supervisors adopted Resolution 103, 2012-2013 establishing the following sustainability principles for the county:

- Reduce and eventually eliminate Dane County government's contribution to fossil fuel dependence and to wasteful use of scarce metals and minerals;
- Reduce and eventually eliminate Dane County government's contribution to dependence upon persistent chemicals and wasteful use of synthetic substances;
- Reduce and eventually eliminate Dane County government's contribution to encroachment upon nature and harm to life-sustaining ecosystems (e.g., land, water, wildlife, forest, soil, ecosystems); and
- Reduce and eventually eliminate Dane County government's contribution to conditions that undermine people's ability to meet their basic human needs.

15. **Fair Labor Practices:**

Dane County Ord. 25.09 (1) is as follows:

(28) BIDDER RESPONSIBILITY. (a) Any bid, application or proposal for any contract with the county, including public works contracts regulated under chapter 40, shall include a certification indicating whether the bidder has been found by the National Labor Relations Board (NLRB) or the Wisconsin Employment Relations Committee (WERC) to have violated any statute or regulation regarding labor standards or relations within the last seven years. The purchasing manager shall investigate any such finding and make a recommendation to the committee, which shall determine whether the conduct resulting in the finding affects the bidder's responsibility to perform the contract.

If you indicate that you have been found by the NLRB or WERC to have such a violation on the Vendor Information page, you must include a copy of any relevant information regarding such violation with your proposal, bid or application.

Additional information about the NLRB and WERC can be found using the following links:
www.nlrb.gov and <http://werc.wi.gov>.

VENDOR INFORMATION

VENDOR NAME:

Vendor Information (address below will be used to confirm Local Vendor Preference)

Address			
City		County	
State		Zip+4	
Vendor Rep. Name		Telephone	
Title			
Email			
Dane County Vendor #			

Cooperative Purchasing (Reference General Guidelines #9)

<input type="checkbox"/>	I <u>agree</u> to furnish the commodities or services of this bid to municipalities and state agencies.
<input type="checkbox"/>	I <u>do not agree</u> to furnish the commodities or services of this bid to municipalities and state agencies.

Fair Labor Practice Certification (Reference General Guidelines #17)

<input type="checkbox"/>	Vendor has not been found by the National Labor Relations Board (“NLRB”) or the Wisconsin Employment Relations Commission (“WERC”) to have violated any statute or regulation regarding labor standards or relations in the seven years prior to the date this bid submission is signed.
<input type="checkbox"/>	Vendor has been found by the National Labor Relations Board (“NLRB”) or the Wisconsin Employment Relations Commission (“WERC”) to have violated any statute or regulation regarding labor standards or relations in the seven years prior to the date this bid submission is signed.

Addenda – we hereby acknowledge receipt, review and use of the following addenda, if applicable.

Addendum #1 <input type="checkbox"/>	Addendum #2 <input type="checkbox"/>	Addendum #3 <input type="checkbox"/>	Addendum #4 <input type="checkbox"/>	None <input type="checkbox"/>
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Signature Affidavit

In signing this bid, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other bidder, competitor or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids to any other bidder or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this bid, hereby agrees with all the terms, conditions, and specifications required by the County in this Request for Bid, and declares that the attached bid and pricing are in conformity therewith.

Signature		Title	
Name (Printed)		Date	

BID AND SPECIFICATION OVERVIEW

Dane County as represented by the Purchasing Division will accept bids for the purchase of specified item(s) as described within this document.

Specification Compliance: Bidder shall complete every space in the area provided with either a check mark to indicate the item being bid is exactly as specified (**Yes**), or deviates from bid specification (**No**). Any deviation from the minimum specifications stated herein must be identified in detail in the Specifications Deviations section of the bid and must include a description of how the proposed item(s) differ from the bid requirements, along with detailed justification for such deviation. Bidder shall include photos and schematics as necessary, for complete clarification.

The specifications below describe an acceptable product. Minor variations in specification may be accepted if, in the opinion of County staff, they do not adversely affect the quality, maintenance or performance of the item(s). Dane County reserves the right to accept or reject any and all bids, to waive informalities and to choose the bid that best meets the specifications and needs of the County.

Term: The contract shall be effective on the date indicated on the Dane County purchase order or the Dane County contract execution date and shall run for one year from that date.

BID SPECIFICATIONS
Bid #121020 Mastic Pavement Repair

GENERAL

You are invited to submit a bid to provide Mastic Pavement Patching and Crack Sealing services on several Wisconsin Department of Transportation Highways. This project is being let on their behalf by the Dane County Highway Department.

All materials supplied under this proposal shall conform to the Standard Specifications for Road and Bridge Construction, 2021 edition (hereinafter referred to as the "Standard Specifications"), and all subsequent revisions and supplementary specifications, of the Wisconsin Division of Highways, Department of Transportation.

The special provisions in this proposal shall supplement and take precedence over the Standard Specifications.

Your failure to submit a bid may prevent Dane County Highway and Transportation Department from acquiring your product(s). Thus, if you are interested in doing business with the Dane County Highway and Transportation Department in 2021, we strongly encourage you to submit a bid by the opening date indicated.

MASTIC PAVEMENT REPAIR**Description**

This specification describes construction methods and materials for patching distressed pavements and cracks using engineered mastic materials.

MaterialsBinder Requirements

- | | |
|--|--------------|
| • Cone Penetration: 77° F ASTM 5329 | 80mm dmm max |
| • Flexibility: 1-inch mandrel, 2 seconds, 80° bend | -15° F |
| • Softening Point ASTM D36 | 189° F |

Aggregate Requirements

- | | |
|--------------------|---------|
| • Passing #4 Sieve | 90% Min |
|--------------------|---------|

Blended Product

- | | |
|---|---------|
| • Specific gravity of the blended mastic product (aggregate and binder) | 1.6-2.0 |
|---|---------|

Preparation of Distressed Pavement and Cracks

Pavement surface is to be clean and free of excess dirt, debris, patch material, weeds/grass and moisture using a high capacity heat lance. The heat lance is to be operated with propane and compressed air in combination and capable of achieving a temperature of heated air at the exit orifice of 1,800° F and a discharge velocity of 3,000 feet per second.

Where necessary cracks should be opened to a minimum width of 1" wide x 1" deep. Crack preparation can be achieved using any combination of the following; dry oil-free compressed air (90 psi), routing, random crack saws, milling equipment, power brushes and vacuum sweepers.

Mastic Material Melting and Application

The material shall be melted using a manufactured applicator specifically designed for the melting, heating and application of modified polymerized asphalt sealants with aggregate. Melter agitator must be capable of keeping aggregate evenly suspended in heated material. Begin agitation when material has melted sufficiently for the agitator to turn, and continue heating until material temperature meets the manufacturer recommended application temperatures. Continue agitation as material is applied.

The Contractor is to follow manufacturer recommendations to select the mastic material to match the type of pavement distress.

At the time of placing sealant, the pavement temperature is to be a minimum of 40° F. Contractor is to follow manufacturer recommendation for layering mastic material in cracks deeper than 2.5-inches.

When applied in a wheel path or other areas where skid resistance is desired the top layer of mastic is to be covered by a manufacturer approved surfacing aggregate.

The contractor is responsible to remove loose aggregate or debris prior to opening driving lanes to traffic. In rural areas this may be accomplished by sweeping onto the shoulder of the road and picking up/removing any larger debris. In urban areas all material is to be picked up and removed.

Traffic Control & Work Hours

Dane County will provide traffic control for all project locations. Work hours on each project are listed below. Contractor to contact Dane County Highway Engineer, Sue LeBrun, at 608-575-2824 a minimum of 5 working days prior to the start of work to schedule traffic control.

- US 12 (Mill Pond Rd to CTH N) No Restrictions 4-lane divided, one lane closed
- US 12 (CTH N to STH 134) Work Hours Vary* 2- lane roadway, Traffic to be flagged
- US 12 (CTH P to CTH Y) No Restrictions 4-lane divided, one lane closed

* If flaggers can be kept to less than ¼ mile apart work hours are 8 a.m. to 3 p.m. If flaggers are between ¼ mile to ½ mile apart work hours are 9 a.m. to 2 p.m. Flagged operations cannot be longer than ½ mile apart. Before and after these work hours crews can work on the 4-lane divided section of USH 12 between CTH AB and CTH N.

Method of Measurement

Mastic Pavement Repair will be measured by the pound (lb) of material acceptably completed and the number of hours worked.

- Mastic material will be paid per pound of material delivered to the County per packing slips and will become property of the Wisconsin DOT/
- Tack/Primer will be paid per gallon of material used on the project
- Installation of material will be measured per pound of material installed.

Basis of Payment

The County will pay for measured quantities at the contract unit price. Payment is full compensation for preparation of distressed pavement and cracks, mastic material melting and application, tack or curing materials if needed, skid resistant aggregate if needed, and for all labor, tools, equipment and material required to complete the work.

PURCHASE OF ITEM(S)

The Dane County Highway and Transportation Department reserves the right to award this bid on a per-item basis or on total net bid, whichever is deemed most advantageous to Dane County.

INSURANCE

Bidders shall carry insurance as required in the Standard Terms and Conditions, Section 20. The bidder shall furnish Dane County Highway and Transportation Department **along with the bid** a certificate of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of policies.

BID BOND/PERFORMANCE BOND

Each proposal must be accompanied by a certified or cashier's check payable to the Dane County Public Works, Highway & Transportation Department, or a bid bond, as a guarantee in the amount of 5% of the total bid.

Successful bidders shall furnish the County with a performance bond equal to 100% of the contracted amount (per State Statute 779.14).

SPECIFICATION DEVIATIONS

Check One:

- No deviations from bid specifications
 Deviations from the bid specifications are present – see list below

Item	Complies	Does Not Comply	Explanation of Deviation
Mastic Material Mfg: _____: Product: _____:			
Mastic Material Mfg: _____: Product: _____:			
Primer/Tack Curing Material Mfg: _____: Product: _____:			

PRICE PROPOSAL

VENDOR NAME:	
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Pricing shall be inclusive of all labor, delivery costs and other expenses necessary to provide product in accordance with the specifications and terms and conditions of this bid document and your proposal.

Project location & description

US 12/18 (I39 to CTH N) – 4 Lane Divided
US 12/18 (CTH N to CTH AB) – 2 Lane Highway
US 12 (CTH P to CTH Y) – 4 Lane Divided

Both roads are existing concrete pavement with random longitudinal cracks and several areas of pavement failure/potholes. WisDOT will purchase a minimum of one semi-load of mastic material. The semi load is assumed to be a total of 46,500 lbs. Any material not used will remain the property of the Wisconsin Department of Transportation.

For purposes of bidding use the following assumptions.

- Approximately 2/3 of the material will be used to patch normal width random cracks.
- Approximately 1/3 of the material will be used to patch larger cracks and potholes.

The bidder awarded this contract is to review the project with WisDOT engineering staff to determine actual quantities for each material to be delivered prior to beginning work. This material is to be delivered to the Dane County Highway Shop at 2302 Fish Hatchery Road. All work is to be completed by August 31, 2021.

ITEM	QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE
1 Purchase of Mastic Material for Normal Random Cracks Material Type: _____. Specific Gravity*: _____.	31,000	LBS	\$	\$
2 Purchase of Mastic Material for Larger Cracks and Potholes Material Type: _____. Specific Gravity*: _____.	15,500	LBS	\$	\$
3 Primer/Tack Curing Material Material Tack Type: _____.	55	GAL	\$	\$
4 Installation of Mastic Material	46,500	LBS	\$	\$
5	TOTAL BID			\$

***Note: Specific Gravity will be used to determine volume of area repaired per pound of material and used to compare bid prices.**

STANDARD TERMS AND CONDITIONS

Request for Bids/Proposals/Contracts

Rev. 11/2019

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 received in the electronic mailbox of the Dane County Purchasing Division on or before the date and time that the bid is specified as being due.

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

Section 5 – Standard Terms and Conditions – Submit with Bid

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

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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.

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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.

27.03 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.