

SECTION 4

TERMS AND CONDITIONS

4.1 REQUEST FOR PROPOSAL (RFP) CLOSING DATE

Without law or policy to the contrary, if the Bidder took reasonable steps to submit the response in due time, and failure of the response to be on hand at the time of closing was not the result of negligence or other faults of the Bidder but was the result of negligence by the County, the County reserves the right to accept such response.

All responses shall remain firm for at least one hundred twenty (120) days following the proposal closing date. The County reserves the right to withhold an award of the proposal for one hundred twenty (120) days from the date of closing.

All responses and accompanying documentation submitted by the Bidders will become the property of the County. Responses shall be based on the material contained in the proposal. Bidders are instructed to disregard any prospective oral representations they may have received before the solicitation of the proposal.

The cost for developing and preparing the response is solely the responsibility of the Bidder whether or not any award results from this solicitation. Furthermore, the cost of developing and preparing responses to the proposal will not be allowed as direct or indirect charges under any resulting Agreement.

No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications will be effective without the prior written consent of the County.

THE COUNTY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO REJECT ANY OR ALL RESPONSES OR ANY PART THEREOF, OR TO WAIVE ANY INFORMALITIES IN THE PROPOSAL AND MINOR IRREGULARITIES, TECHNICAL DEFECTS, OR CLERICAL ERRORS, TO MAKE AN AWARD BASED ON SUITABILITY, QUALITY OF SERVICE(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, AND NOT CONFINED TO PRICE ALONE. THE COUNTY SHALL NOT BE LIABLE FOR ANY COSTS INCURRED BY THE BIDDER IN CONNECTION WITH THE PREPARATION AND SUBMISSION OF THIS OR ANY OTHER PROPOSAL.

4.2 ANNOUNCEMENT OF RESPONSES

All responses received by the published date and time for submission will be publicly displayed at the Department of Administrative Services-Purchasing at 2222 "M" Street, Merced, California 95340, and our Supplier Portal Site. All

information contained in the responses shall be confidential to avoid disclosure of contents prejudicial to competing Bidders during the evaluation process. No award decision, pricing, or exchange of views will be discussed at the time of opening.

4.3 INTERPRETATION, CORRECTIONS, AND AMENDMENTS

The Bidder must carefully examine the specifications, terms, and conditions provided in the RFP and become fully informed as to the requirements set forth therein. If anyone planning to submit a response discovers any ambiguity, conflict, discrepancy, omission, or error in the proposal, has any questions concerning the "REQUIREMENTS", or any other related matters, Bidder shall immediately submit their request for clarification or modification of the RFP no later than the Question and Answer deadline. No further requests for clarification or objections to the proposal will be accepted or considered after this date. Any change in the proposal will be made only by written amendment, issued by the Department of Administrative Services-Purchasing to each vendor on the Bidders list as well as posted on the County website, and shall be incorporated in the proposal. **Any oral communication by the County's designated contact person or any other County staff member concerning this proposal is not binding on the County and shall in no way modify this proposal or the obligations of the County or any Bidders.**

4.4 DISCUSSION WITH RESPONSIBLE BIDDERS AND CLARIFICATIONS TO PROPOSAL

All Bidders submitting a response for consideration agree that their company will be willing to enter into a final Agreement if awarded this proposal. The County may, in its sole discretion, negotiate certain terms and conditions of such final Agreement after identification of the apparent successful Bidder. However, Bidders should not assume that any terms of this RFP or other applicable terms and conditions are subject to later negotiation, and should instead assume that all such terms and conditions are mandatory conditions of participation in this RFP process. Negotiated changes, if any, will not change the "Requirements".

4.5 FALSE OR MISLEADING STATEMENTS

Responses that contain false or misleading statements, or which provide references that do not support an attribute or condition claimed by the Bidder, may be rejected. If in the opinion of the County, such information was intended to mislead the County in its evaluation of the response, and the attribute, condition, or capability is a requirement of this proposal, it will be the basis for rejection of the response.

4.6 INDEPENDENT CONTRACTOR

It is expressly understood that in the performance of any services resulting from this proposal, Bidder is an Independent Contractor and is not an agent or employee of the County and warrants that all persons assigned to the program/project are employees, or subcontractors, of the Bidder. In the event the awarded Bidder shall employ others to complete or perform the services provided, Bidder shall be solely responsible and hold the County harmless from all matters relating to the payment of such person(s).

It is mutually understood and agreed that no employee-employer relationship will be created between County and Bidder or County and Bidder's employees and that the awarded Bidder shall hold County harmless and be solely responsible for withholding, reporting, and payment of any federal, state, or local taxes, contributions or premium imposed or required by workers' compensation, unemployment insurance, social security, income tax or other statutes or codes applying to Bidder, or its subcontractor(s) and employees if any. It is mutually agreed and understood that the Bidder, its subcontractor(s), and employees, if any, shall have no claim under any Agreement that may result from this proposal or otherwise against County for vacation pay, sick leave, retirement, or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

4.7 EXPLANATION OF USE OF SUBCONTRACTORS

Any Bidder using a subcontractor(s) must clearly explain the use of the subcontractor(s) and list the name(s) of the subcontractor(s) providing work under this proposal. The selected Bidder will be fully responsible for all work performed under this proposal and will be considered as the Prime Contractor. Any subcontracting or other legal arrangements made by the Bidder are the sole responsibility of the Bidder. Any Agreement that is entered into between the selected Bidder and the subcontractor(s) shall contain provisions for federal and state access to the books, documents, records, and inspection of work. Bidder awarded any Agreement as a result of this proposal shall obtain County written approval of subcontractors identified in Bidder submittal prior to execution of Agreement.

4.8 JOINT VENTURES

In the event a response is submitted jointly by more than one organization, one legal entity must be designated as the Prime Contractor. All other participants shall be designated as subcontractors.

4.9 CONFIDENTIALITY

The contents of all responses, correspondence, agenda, memoranda, or any other medium which discloses any aspect of a Bidder's response shall be held in the strictest confidence until after negotiations for the Agreement are complete. If you contend that any submission contains trade secrets or proprietary data, please be advised that the County cannot and does not give any assurances or guarantees that such information will not be released under the California Public Records Act. The Bidder should clearly mark any of the information within their response that is proprietary, however, the County will be guided by the California Public Records Act and the definition of Trade Secrets under California Civil Code Section 3426.1, but in no case will the following be considered proprietary: a) the final cost of the bid or response; b) information that is not clearly marked as proprietary in nature; c) information that, though marked as proprietary, is not actually proprietary d) information that is otherwise generally available as information or technology within the subject trade, industry or profession.

BIDDER SHALL NOT DESIGNATE THE ENTIRE RESPONSE AS PROPRIETARY. SUCH ATTEMPTED DESIGNATION WILL NOT BE HONORED.

Submission of a response by a Bidder shall constitute an agreement to the provision for public announcement. The County shall not be obligated to release information contained in any Bidder's RFP submittal that has been marked as proprietary, without the written consent of the Bidder. Any agency requesting such information so marked as proprietary must obtain such written authorization directly from Bidder and forward it to County.

County shall not be required to contact any Bidder for information on behalf of any requesting agency. Merced County shall have the sole discretion and exclusive authority to determine if any other party has properly obtained the right to have access to proprietary information.

4.10 PUBLIC AGENCY PARTICIPATION

Any public agency, i.e., city, district, public authority, public agency, municipality, and other political subdivision or a public corporation (hereinafter referred to as Public Agency) shall have the option of participating in any award made as a result of this proposal at the same prices, and terms and conditions. The County is not an agent, partner, or representative of the Public Agency, and is not obligated or liable for any financial responsibility in connection with purchase orders issued by any Public Agency. The Public Agency shall accept sole responsibility for placing orders or payments to the successful Bidder.

4.11 PRICING CONDITIONS

All responses shall remain firm for at least one hundred twenty (120) calendar days after RFP Submittal Deadline unless otherwise specified. Within one hundred twenty (120) calendar days after the RFP Submittal Deadline, a purchase order and/or an Agreement may be awarded by the County, as it may deem proper, in its absolute discretion. The time for awarding a purchase order and/or an Agreement may be extended at the sole discretion of the County, if required to evaluate responses or for such other purposes as the County may determine.

4.12 DETERMINATION OF BIDDER'S RESPONSIBILITY

4.12.1 Responsible Bidder

A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, financial strength, and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Bidders.

4.12.2 Non-responsible Bidder

The County may declare a Bidder to be non-responsible for purposes of this proposal for a variety of reasons, some of which are listed below. This is not an exclusive list, reasons may include, but are not limited to the following:

- Committed any act or omission which negatively reflects on the Bidder's quality, fitness, financial strength, or capacity to perform any Agreement that may be derived from this proposal with the County or an Agreement with any other public entity, or engaged in a pattern or practice which negatively reflects on same; or
- Committed an act or omission which indicates a lack of business integrity or business honesty; or
- Made or submitted a false claim against the County or any other public entity; or
- Submitted false, incomplete, or unresponsive statements or omitted requested documentation in connection with this proposal.

4.13 PUBLIC DISCLOSURE

All public records of the County are available for disclosure except the contents of the responses received in response to an RFP, which are not open for public review until the contract between the awarded Bidder and the County is agendized with the Board of Supervisors. If an unsuccessful Bidder files an official request to view the awarded Bidder's response, the County must comply with appropriate public disclosure procedures. However, if information specifically designated in

the response as proprietary is requested County may attempt to notify Bidder should Bidder wish to pursue protections against disclosure, at its own cost, so that the information will not be made available.

Pursuant to the California Public Records Act, Government Code Sections 6250 *et seq.*, any contract that eventually arises from this Request for Proposal is a public record, in its entirety. Also, all information submitted in response to this Request for Proposals is itself a public record **without exception**, and will be disclosed upon request, but only after negotiations are complete. Submission of any materials in response to this Request for Proposals constitutes your consent to release materials and a waiver of any claim that the information is protected from disclosure. Furthermore, by submitting materials, you agree to indemnify and hold harmless Merced County for the release of such information.

4.14 QUALIFICATIONS OF BIDDER

The County may make such investigation as it deems necessary to determine the ability of the Bidder to provide the services requested herein, and the Bidder shall furnish to the County all information and data for this purpose as the County may request. The County reserves the right to reject any response should the evidence submitted by, or investigation of, the Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the proposal and to complete the requirements contemplated therein.

4.15 DISQUALIFICATION OF BIDDER

A Bidder may be disqualified and the response rejected, in addition to any other cause for rejection as set forth elsewhere in this proposal, for any of, but not limited to, one of the following reasons:

- Proof of collusion among Bidders, in which case all responses involved in the collusive action will be rejected and any participant to such collusion will be barred from future bidding until reinstated as a qualified Bidder.
- Lack of responsibility or cooperation as shown by past work or services provided to the County or others.
- Being in arrears on existing Agreements with the County or having defaulted on previous Agreements.
- Incomplete information or missing documents as required in the proposal.

4.16 INTEGRITY OF EXPENDITURE

The Bidder assures that every reasonable course of action will be taken to maintain the integrity of expenditure of public funds and to avoid any favoritism, questionable, or improper conduct.

4.17 GRATUITIES

Neither the Bidder nor any person, firm, or corporation employed by the Bidder shall give, directly or indirectly, to any employee or agent of the County, any gift, money, or anything of value, or any promise, obligation, or Agreement for future reward or compensation, neither during the proposal process nor during the performance of any Agreement period resulting from this RFP.

4.18 CONFLICT OF INTEREST

The Bidder covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this proposal. Bidder shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractor(s), and the County. Bidder shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence any award of this proposal or any competing offer, shall have any direct or indirect financial interest resulting from any Agreement that may be derived from this proposal or shall have any relationship to the Bidder or officer or employee of the Bidder, nor that any such person will be employed by Bidder in the performance of any Agreement that may be derived from this proposal without immediate divulgence of such fact to the County.

4.19 FEDERAL, STATE, AND LOCAL TAXES

The awarded Bidder shall pay all taxes lawfully imposed upon it with respect to this RFP or any product delivered with respect to the Agreement. The County makes no representation whatsoever as to the exemption from liability to any tax imposed by any government entity on the awarded Bidder.

4.20 OSHA REQUIREMENTS

All material, equipment, or labor submitted under this proposal by Bidder shall meet the required standards of OSHA 1970 and CA-OSHA 1973. Bidder warrants that the described material, equipment, or labor meets all appropriate OSHA safety and health requirements. Further, Bidder warrants that the said material or equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment.

4.21 ENVIRONMENTAL PROTECTION

The Bidder awarded the Agreement resulting from this proposal shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (41 USC 1857(h)), Section 508 of the Clean Water Act (33 USC,

1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal Agreements, grants, and loans of facilities included on the EPA List of Violating Facilities. The Contractor shall report violations to the applicable federal agency and the US EPA Assistant Administrator for enforcement.

4.22 DRUG-FREE WORKPLACE

The awarded Bidder must certify that it will provide a drug-free workplace as set forth by the Federal Drug-Free Workplace Act of 1988.

4.23 PREVAILING WAGE RATES

Should the RFP call for the Bidder to be responsible for any site preparation activities, the Bidder will be required to certify adherence to the requirements of all state and federal laws relating to the payment of prevailing wage rates for work performed under public works project laws, specifically, as covered by the federal Davis-Bacon Act and California Labor Code 1720 et seq. A copy of this wage scale may also be obtained from the office of the Director of Industrial relations, State of California, or <http://www.dir.ca.gov/DLSR/PWD/mer.xls/>.

It shall be mandatory upon the Bidder to whom the Agreement is awarded, and upon all subcontractors under them, to ascertain and pay not less than the latest general prevailing hourly rates for Saturday, Sunday, holidays, and overtime work for each workman or mechanic employed in the execution of the work of this project as per determination made by the Director of Industrial Relations, California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773, and 1773.1.

4.24 COMPLIANCE WITH APPLICABLE LAWS

The successful Bidder shall otherwise perform all obligations under the resulting Agreement in compliance with all applicable federal, state, and local laws, rules, regulations, and policies.

No Bidder or subcontractor(s) may be listed on a bid response for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No Bidder or subcontractor(s) may be awarded an Agreement for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

4.25 LEGAL CONSIDERATIONS

Any Bidder, by submission of a response to this RFP, and any subsequent Agreement that may be derived from this RFP, shall be deemed and have agreed to be bound by the laws of the State of California in all respects as to the interpretation, construction, operation, effect, and performance.

Notwithstanding any other provisions of this proposal, any dispute concerning any question of fact or law arising under this proposal, or arbitration arising out of any Agreement that may be awarded as a result of this proposal, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

4.26 OUT-OF-STATE BIDDER

Where the Bidder is an Out-Of-State Bidder, not doing business in the State of California, the package bid or purchase price, to determine the lowest price bid, shall be increased by the applicable retail rate of general sales tax and use tax when and where applicable.

4.27 LOCAL BUSINESS PURCHASING PREFERENCE

Notwithstanding any other provision contained herein to the contrary, a ten percent (10%) preference shall be granted to local businesses whenever the purchasing agent of Merced County purchases services, supplies, materials, and/or equipment for County use through the competitive bid process, which shall be defined herein to include quotes, bids, and proposals. The purchasing agent in evaluating competitive bids shall determine the lowest responsible Bidder, and if the lowest responsible Bidder is a non-local Bidder then a ten percent (10%) preference shall be granted to local Bidders. Local preference only applies to the procurement of services, supplies, materials, and/or equipment, and will not apply to bids conducted with other public agencies nor when prohibited by state or federal statutes or regulations to be awarded to the "lowest responsible Bidder" or otherwise exempted from local preference.

A local Bidder is defined as:

- a. A principal place of business located within the County of Merced with a valid and verifiable business license, if applicable, issued by a city within the County or a business located in the unincorporated areas of the County. Post Office Boxes do not qualify as verifiable local business addresses; and
- b. Employs at least one (1) full-time employee within the County, or if the business has no employees, shall be at least fifty percent (50%) owned by one or more persons whose primary residence(s) is located within the County; and

- c. Has had a fixed office or place of business having a street address within the County for at least six (6) months immediately prior to the issuance of the request for competitive bids by the County.

The ten percent (10%) local preference shall be deducted from the total dollar amount bid by local Bidders on competitive quotes and bids, and assess on the total evaluated aggregate score obtained by local Bidders on proposals (County of Merced County Policy, Chapter 5.12.025, "Local Business Purchasing Preference" Policy).

4.28 BUSINESS LICENSE

Prior to the issuance of any purchase order and/or the performance of any Agreement derived from this bid, the successful Bidder and its subcontractors shall be required to maintain a Merced County Business License in accordance with the County of Merced Ordinance No. 1705, "An Ordinance Establishing a requirement for a Business License and Temporary Business License and/or persons operating in the unincorporated areas of Merced County" (<http://www.qcode.us/codes/mercedcounty/>).

It is the intent of the Board of Supervisors of the County of Merced to authorize that no person shall maintain, conduct, or carry on a business, whether or not for profit, located in whole or in part at a fixed place of business within the County and outside the limits of any incorporated city, without first obtaining a license to operate as provided under the County of Merced Ordinance No. 1705.