

## MARATHON COUNTY STANDARD TERMS AND CONDITIONS

- 1.0 SPECIFICATIONS:** The specifications in any request for bids or proposal which forms the subject of this contract are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed/provided, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Marathon County shall be the sole judge of equivalency. Contractors are cautioned to avoid bidding/proposing alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 ACCEPTANCE-REJECTION OF BIDS OR PROPOSALS:** Marathon County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of Marathon County. Bids/proposals MUST be date and time stamped by the office of the soliciting purchasing agent on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing agent's office.
- 3.0 CONTRACT INTEGRATION:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of a request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. The documents constituting the contract between Marathon County and Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the following order: Change Orders (with the most recent taking precedence); Contract Document Amendments; the Contract Document as described in this signed Agreement; Request for Proposal Addenda; Request for Proposal; and Firm's Proposal. Any terms of any other documents concerning this agreement are superseded by the terms set forth herein.
- 4.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. Contractor 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. Marathon County reserves the right to cancel this contract if Contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.
- 5.0 INSURANCE REQUIREMENTS:** Contractor shall not commence work under this contract until all insurance required is obtained, and such insurance has been approved Marathon County, nor shall Contractor allow any subcontractor to commence work on their subcontract until all similar insurance requirements have been obtained and approved.
- 5.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work. In case any work is sublet, Contractor shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor.
- 5.2 General Liability, Professional Liability and Property Damage Insurance.** Contractor shall secure and maintain in force throughout the duration of this contract such General Liability, Professional Liability (if necessary), and Property Damage Insurance as shall protect itself and any subcontractor performing work covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by Contractor, or by any subcontractor or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as required by County:
- 5.3 Marathon County reserves the right to require higher or lower limits where warranted.
- 5.4 Marathon County reserves the right to require additional security, including, but not limited to, bid bonds or performance bonds as specifically set forth in its request for bids or proposals.
- 5.5 **PROOF OF INSURANCE:** Contractor shall furnish the County with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that Contractor meets the insurance requirements identified above. The Certificates of Insurance shall include a provision prohibiting cancellation of said policies except upon 30 days prior written notice to the County and specify the name of the contract or project covered. The Certificate of Insurance shall be delivered to the

Authorized Purchasing Agent, with a copy of the Certificate of Insurance to be delivered to the Marathon County Risk Manager for approval prior to the execution of this contract. Upon renewal of the required insurance, and annually thereafter, the County shall receive a new Certificate of Insurance for three years after completion of the project. The Certificates shall name Marathon County as an additional insured and describe the contract by name and or identification number in the "Description of Operations" section of the form.

**6.0 CANCELLATION / TERMINATION:** Marathon County reserves the right to:

- 6.1 NONAPPROPRIATION OF FUNDS. Cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the Contractor to comply with terms, conditions, and specifications of this contract.
- 6.2 Terminate this contract, for the County's convenience, at any time by a notice in writing from the County to Contractor by certified mail. If the Contract is terminated by the County as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of Contractor covered by this Contract, unless payments of compensation have previously been made.

**7.0 CONTRACT MODIFICATIONS:** The scope of the services to be performed under this Contract may be amended or supplemented by mutual written agreement between the parties to the Contract. This amendatory provision shall not operate to prevent Marathon County from exercising its reserved right to establish reasonable time schedules for any of the work or services to be performed by or deliveries to be received from Contractor hereunder. Furthermore, this amendatory provision shall not operate to prevent the County from canceling any of the services not yet performed or any deliveries not yet made at the time notice is given to Contractor of the cancellation of such services or portion of the work to be performed hereunder.

**8.0 ASSIGNMENT:** No right or duty in whole or in part of the scope of work under this contract may be assigned or delegated without the prior written consent of Marathon County.

**9.0 PUBLIC RECORDS ACCESS:** Marathon County is a political subdivision of the State of Wisconsin and as such is subject to the Wisconsin Public Records Law. It is the policy of Marathon 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. Evaluations of responses to requests for proposals are subject to further discussion, clarification, and negotiation. Records of bids and responses to requests for proposal will not be available for public inspection prior to issuance of the award of the contract.

**10.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a response to request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with the Wisconsin Public Records Law. Proprietary restrictions normally are not accepted. However, when accepted, it is Contractor's responsibility to defend the determination in the event of an appeal or litigation.

- 20.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of Marathon County.
- 20.2 Any material submitted by Contractor in response to Marathon County's request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin Public Records Law, must be identified and include citation to the specific provisions of law that preclude disclosure and any factual or background information necessary to establish that the identified provisions of the law apply to that particular information. Bid/proposal prices cannot, under any circumstances, be held confidential.
- 20.3 In the event Marathon County becomes involved in litigation due to Contractor's refusal of permission to release information identified as confidential or proprietary, Contractor agrees to indemnify, defend, and hold harmless Marathon County for any costs associated with said litigation.

**11.0 CONFIDENTIALITY OF MARATHON COUNTY'S DATA:** In the event work conducted under this contract requires Contractor to have access to Marathon County's database via Internet, direct contact or other connection to allow the provision of installation, support and maintenance services, Contractor agrees to keep all such data confidential and to execute any reasonable agreement to assure Marathon County that Contractor will comply with all state and

federal confidentiality laws and/or regulations. These restrictions herein shall survive the termination of this contract, regardless of the reason for termination, and shall continue in full force and effect and shall be binding upon Contractor or its agents, employees, successors, assigns or subcontractors. Contractor shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by Contractor, its agents, employees, successors, assigns and subcontractors regarding the confidentiality restrictions herein.

**12.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of Marathon County, any of its departments, agencies or other subunits, or any county official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of Marathon County. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of Marathon County's purchasing agent.

**13.0 MUTUAL HOLD HARMLESS/INDEMNIFICATION:**

13.1 Contractor hereby agrees to release, indemnify, defend, and hold harmless Marathon County, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of Contractor's officers, officials, employees, agents or assigns.

13.2 Marathon County hereby agrees to release, indemnify, defend, and hold harmless Contractor, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of Marathon County's officers, officials, employees, agents or assigns.

13.3 Marathon County does not waive, and specifically reserves, its rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893, and related statutes.

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

**15.0 GRATUITIES AND KICKBACKS:** It shall be unethical for any person to offer, give, or agree to give any elected official, employee or former employee, or for any elected official, employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer for employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

**16.0 DISPUTE RESOLUTION:** This Contract and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, including conflict of law provisions. Contractor consents to personal jurisdiction in the State of Wisconsin. The venue of any action hereunder shall be in Marathon County, Wisconsin. If a dispute related to this agreement arises, all parties shall attempt to resolve the dispute through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 of the Wisconsin Statutes or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, any party may commence an action in court as set forth above. If a lawsuit is commenced, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to §802.12, Wis. Stats., or any successor statute. Unless otherwise provided in this contract, the parties shall

continue to perform according to the terms and conditions of the contract during the pendency of any litigation or other dispute resolution proceeding.

- 17.0 INDEPENDENT CONTRACTOR STATUS:** The parties hereto agree that Contractor, its officers, agents, and employees, in the performance of this Contract, shall act in the capacity of an independent contractor and not as an officer, employee or agent of Marathon County. The Contractor shall not be entitled to any of the rights, benefits, salaries, wages, or fringe benefits which employees of Marathon County are eligible to receive. No federal, state, or local taxes or social security deductions or contributions shall be made by Marathon County on behalf of the Contractor. Neither Marathon County nor Contractor will represent itself as the agent or legal representative of the other or as partner or joint venture for any purpose whatsoever, and neither shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other in any way whatsoever. Furthermore, Contractor agrees to take such steps as are necessary to ensure that each of its subcontractors, if any, will not be considered to be an agent, servant, joint venture with, or partner of, Marathon County.
- 18.0 NON-DEBARMENT CLAUSE:** Contractor hereby certifies that neither it nor any of its principal officers or officials has ever been suspended or debarred, for any reason whatsoever, from doing business or entering into contractual relationships with any governmental entity. Contractor further agrees and certifies that this clause shall be included in any subcontract of this contract. Marathon County also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal or State of Wisconsin procurement and non-procurement contracts.
- 19.0 STATEMENT OF COMPLIANCE:** Contractor has carefully reviewed Marathon County's required contract language, as set forth in the Request for Proposal/Bid pertaining to termination of contract, change orders, gratuities and kickbacks, non-appropriation of funds, hold harmless/indemnification, insurance requirements/proof of insurance, dispute resolutions, and non-debarment, and is in full compliance with all statements and requirements.
- 20.0 WAIVER/SEVERABILITY:** No waiver of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this contract. If any provision of this contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and said provision shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this contract entirely.