

**SECTION A: Standard Terms and Conditions**

(STC-PHMDC Form: 9/2/09)

This document is intended to indicate the minimum requirements for the submission of bids.

1. General. Throughout this document, "Public Health-Madison and Dane County," "PHMDC" and "Purchasing" shall be synonymous and mean the Board of Health for Madison and Dane County on behalf of Public Health - Madison and Dane County. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer" and "contractor." The phrases "request for proposal," "invitation for bids," "request," "invitation," and "solicitation" shall also be synonymous.

As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous. If PHMDC accepts a bid or proposal, the bid or proposal together with PHMDC's entire Request for Proposals or Invitation for Bids and any other terms and conditions expressly agreed between the parties in writing, shall constitute a contract and will be the Entire Agreement, as described in paragraph 2 ("Entire Agreement"). In the event of any conflict between this Section A and any other terms and conditions included in the accepted bid or proposal, the terms of Section A shall control unless the parties expressly agree to another order of precedence, in writing. Finally, if a separate written contract is executed between the parties as a result of this solicitation, the terms and conditions of that contract shall control.

This invitation for bids does not commit PHMDC to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. PHMDC may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.

PHMDC reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities, which at PHMDC's discretion is determined to be in the best interests of PHMDC. Further, PHMDC makes no representations that a contract will be awarded to any offeror responding to this request. PHMDC expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).

PHMDC reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.
2. Entire Agreement. These standard terms and conditions shall apply to any contract or order as a result of this Request for Bid/Proposal except where special requirements are stated elsewhere in the Request, in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any documents, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by PHMDC.
3. Addenda. Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.
4. Price Proposal. All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.
5. Price Inclusion. The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.
6. Pricing and Discount.
  - a. Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea., etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
  - b. In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.
7. F.O.B. Destination Freight Prepaid. Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.
8. Tax Exemption. Public Health Madison and Dane County is exempt from the payment of Federal Excise Tax and State Sales Tax. **PHMDC Tax Exempt number is ES 42916**. Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to PHMDC, will be paid by PHMDC.

9. Specifications.

- a. All bidders must be in compliance with all specifications and any drawings provided with this solicitation. Exceptions taken to these specifications must be noted on your bid.
- b. When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. PHMDC shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.

10. Regulatory Compliance.

- a. Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.
- b. If it is determined by PHMDC that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.

11. Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for ninety (90) days from the date of receipt. If bidder or manufacturer offers warranty that exceeds 90 days, such warranty shall prevail.

12. Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies, photos and similar materials used to produce a printing job shall become the property of PHMDC. Any furnished materials shall remain the property of PHMDC. Failure to meet this requirement will disqualify your bid.

13. Award.

- a. City of Madison Purchasing, acting on behalf of and in consultation with PHMDC will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.
- b. The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of PHMDC.

14. Responsiveness and Responsibility. Award will be made to the responsible and responsive bidder whose bid is most advantageous to PHMDC with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.

Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.

PHMDC reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to PHMDC, or has failed to perform faithfully any previous contract with PHMDC. If requested, the bidder must present within five (5) working days evidence satisfactory to PHMDC of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.

15. Cancellation.

- a. PHMDC reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.
- b. In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue unremedied for a period of ten (10) days after written notice to the Bidder, PHMDC may, at its option and in addition to all other rights and remedies which it may have, terminate the Agreement and all rights of the Bidder under the Agreement.
- c. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, PHMDC shall have the right to cancel and terminate the contract without notice.

16. Item Return Policy. Bidder will be required to accept return of products ordered in error for up to twenty-one (21) calendar days from date of receipt, with PHMDC paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

17. Payment Terms and Invoicing. PHMDC will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified.

- a. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.

- b. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the upper middle section of the purchase order. Send invoices to City of Madison Accounts Payable using the address on the purchase order. Do not send invoices to Purchasing or ship-to address.
- c. Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
- d. Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.

18. Civil Rights, Affirmative Action, Disability Rights.

(Dane County 19.54,.56) The Board of Health for Madison and Dane County has adopted Dane County's affirmative action plan, equal opportunities/nondiscrimination in employment practices plan, and provision of services plan and PHMDC is subject to such policies. Contractor agrees to submit to the jurisdiction of the Dane County Executive Office, Office of Equal Opportunity for purposes of enforcement and investigation of the following provisions, to the extent such provisions apply to Contractor:

- a. Civil Rights Compliance: If contractor has 20 or more employees and receives \$20,000 in annual contracts with PHMDC and is not otherwise exempt by Dane County ordinance, contractor shall submit to the Dane Co. Office of Equal Opportunity a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990.
- b. Affirmative Action: If contractor has twenty (20) or more employees and receives \$20,000 in annual contracts with PHMDC, CONTRACTOR shall file an Affirmative Action Plan with the Dane County Contract Compliance Officer in accordance with Ch. 19 of the Dane County Ordinances. The AA plan shall be filed within fifteen (15) days of the effective date of this PO and failure to do so shall constitute grounds for immediate termination of this Agreement by PHMDC. contractor shall also submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Contract and failure to

do so by said date shall constitute grounds for immediate termination of the Contract by PHMDC. Contractor shall also provide copies of all announcements of employment opportunities, and report annually the number of persons, by race, ethnicity, gender, and disability, status, who apply for employment and, similarly classified, the number hired and the number rejected.

- c. Disability: contractor and any Subcontractors agree not to discriminate on the basis of disability, as required by The Americans with Disabilities Act (ADA) of 1990, the Wisconsin Statutes secs. 111.321 and 111.34, and applicable sections of Chapter 19 of the Dane County Ordinances. contractor agrees to post in conspicuous places, available to employees, service recipients, and applicants for employment and services, notices setting forth the provisions of this paragraph.
19. Nondiscrimination. (Dane County Ord. 19.54). During the term of this Agreement, Contractor agrees not to discriminate 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 against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). Contractor agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth-additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.
20. Living Wage. (Applicable to Service Contracts Exceeding \$5,000.) PHMDC is to follow the living wage ordinance of either the City of Madison or Dane County, whichever provides the higher living wage. The City of Madison has, by ordinance, established a minimum living wage effective January 1, 2001, of an hourly rate equal to 110% of the poverty level divided by 2080. "Poverty Level" means an annual income equal to the U.S. Department of Health and Human Services' most recently published poverty guideline for a family of four. Unless this contract is exempt under Section 4.20 of the Madison General Ordinances, Contractor agrees to pay all employees employed by the Contractor in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than the City of Madison's minimum hourly wage as described above or as established in the most current version of Section 4.20 of the Madison General Ordinances. More information is available at:

21. Prevailing Wage. Contractor may be required to pay prevailing wage rate(s) to all trades and occupations if determined to be applicable under state or local law. Such a determination, and the appropriate wage scale, will be determined prior to signing the contract and commencing work.

22. **Indemnification. Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the Board of Health for Madison and Dane County, Public Health - Madison and Dane County, the City of Madison, and the County of Dane, and their officers, officials, agents, boards, committees/commissions, agencies and employees (collectively, the "Indemnified Parties") against any and all liability, loss or expense (including liability costs and attorney's fees) by reason of any claim or suit or liability imposed by law upon the Indemnified Parties for damages for any reason, including but not limited to property damage or loss of use thereof, bodily injury, or death at any time resulting therefrom, sustained by any person or persons arising from, in connection with, caused by or resulting from the Contractor's acts or omissions in the performance of this contract. The obligations of Contractor under this paragraph shall survive the expiration or termination of this Contract.**

23. Insurance

a. In order to protect itself and the Indemnified Parties under paragraph 22 above, Contractor shall obtain and at all times during the term of this contract keep in full force and effect comprehensive general liability and auto liability insurance policies (as well as professional malpractice or errors and omissions coverage, if the services being provided are professional services) issued by a company or companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department, with liability coverage provided for therein in the amounts of at least \$1,000,000.00 CSL (Combined Single Limits). Coverage afforded shall apply as primary. PHMDC shall be given ten (10) days advance notice of cancellation or nonrenewal. Upon execution of this Contract, Contractor shall furnish the Risk Manager for Dane County with a certificate of insurance listing BOHMDC, PHMDC, the City of Madison and the County of Dane as additional insureds and, upon request, certified copies of the required insurance policies. If Contractor's insurance is underwritten on a Claims-Made basis, the Retroactive Date shall be prior to or coincide with the effective date of this Contract. The Certificate of Insurance shall state that coverage is Claims-Made and indicate the Retroactive Date. Contractor shall maintain coverage for the duration of this Agreement and for two years following the completion of this Agreement. Contractor shall furnish the Risk Manager for Dane County, annually on the policy renewal date, a Certificate of Insurance as evidence of coverage while the Contract is in

effect. It is further agreed that Contractor shall furnish the Dane County Risk Manager 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 Contractor or PHMDC may invoke the tail option on behalf of the other party and that the Extended Reporting Period premium shall be paid by Contractor. In the event any action, suit or other proceeding is brought against the indemnified parties upon any matter herein indemnified against, PHMDC shall give reasonable notice thereof to Contractor and shall cooperate with Contractor (or Contractor's attorney) in the defense of the action, suit or other proceeding. Contractor shall furnish evidence of adequate Worker's Compensation Insurance.

b. In case of any sublet or subcontracting of work, Contractor shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of Contractor.

c. The parties expressly agree that PHMDC, acting at its sole option and through the Risk Manager for Dane County, may waive any and all requirements contained in this paragraph, 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 the Risk Manager taking into account the nature of the work and other factors relevant to PHMDC's exposure, if any, under this Contract.

24. Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.

25. Compliance.

a. Regulations. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

b. Licensing and Permits. The Contractor selected under this bid shall be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this contract. The Contractor shall also be required, when appropriate, to obtain the necessary building permits prior to performing work on PHMDC facilities.

26. Project Completion Date. All bidders are required to show a project completion date on the attached proposal page.

27. Warranty of Materials and Workmanship.

a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.

- b. Work not conforming to these warranties shall be considered defective.
- c. This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.

28. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of PHMDC notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this contract and its specifications.

29. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as PHMDC may deem necessary, the Contractor shall permit the authorized representatives of PHMDC to review and inspect all materials and workmanship at any time during the duration of this contract, provided, however, PHMDC is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, contract requirements and specifications.