

# GENERAL TERMS AND CONDITIONS

## Article 1 General

- 1.1 **Contract:** This Request for Proposal, submitted documents, and any negotiations, when properly accepted by Archuleta County, shall constitute a contract equally binding between the County and Contractor. No different or additional terms shall become a part of this Contract with the exception of an Amendment.
- 1.2 **Offer/Acceptance of RFP Terms:** If the Contractor's proposal is accepted, then a purchase order will be issued by the County to the Contractor. This purchase order is an ACCEPTANCE of the Contractor's OFFER TO SELL in accordance with the terms and conditions of the RFP, as stated in your proposal. If no proposal is referenced, the purchase order is an OFFER TO BUY, subject to the Contractor's acceptance, which must be demonstrated by either your performance of the purchase order or by a formal acknowledgement in writing. Any COUNTER-OFFER TO BUY is automatically construed as a CANCELLATION of the purchase order unless a change order is issued accepting a counter-offer. In the event Contractor's form(s), or part(s) of forms are included in, or as an attachment to, any bid, proposal, offer, acknowledgement, or otherwise, Contractor agrees that, in the event of inconsistencies or contradictions, the terms and conditions of this solicitation document shall supersede and control over those contained in the Contractor's form(s) regardless of any statement to the contrary in the Contractor's form(s). Unless the County purchasing agent specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on Contractor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.
- 1.3 **Amendment/Changes:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the Request for Proposal, submitted documents and written amendments properly accepted, which constitute the contract. Nothing in the contract may be added to, modified, superseded or otherwise altered except in writing and signed by an authorized representative of the County and acknowledged by the Contractor. Each shipment received or service performed shall be only upon the terms contained in the contract, notwithstanding any terms that may be contained in any invoice or other act of the Contractor other than acknowledgement of a written change order to the purchase order. The Contractor agrees to furnish the products and/or services in strict accordance with the specifications and at the price set forth for each item.
- 1.4 **Assignment:** The Contractor shall not sell, assign, transfer or convey any contract resulting from this RFP, in whole or in part, without the prior written approval from the County.
- 1.5 **County's Project Manager:** The Project Manager, on behalf of the County, shall render decisions in a timely manner pertaining to the work proposed or performed by the Contractor. The Project Manager shall be responsible for approval and/or acceptance of any related performance of the Work.

**For this request, the County Project Manager is:**

- 1.6 **Independent Contractor:** The Contractor shall be legally considered an Independent Contractor and neither the Contractor nor its employees shall, under any circumstances, be considered servants or agents of Archuleta County. The County shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The County shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security Tax or any other amounts for benefits to the Contractor. Further, the County shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees.

- 1.7 **Ownership:** All plans, prints, designs, concepts, etc., shall become the property of Archuleta County.
- 1.8 **Warranties:** All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of these Terms and Conditions and are in addition to any warranties stipulated in the specifications.
- 1.9 **Venue:** Any agreement as a result of responding to this RFP shall be deemed to have been made in, and shall be construed and interpreted in accordance with, the laws of the State of Colorado, and any action brought to enforce any provisions shall be maintained in Archuleta County, Colorado. The prevailing party in any action to enforce the terms and conditions of this Agreement shall collect all reasonable costs and expenses incurred in such action, including, but not limited to, reasonable attorney's fees.

## Article 2 Interpretation

- 2.1 **Failure to Enforce:** Failure by the County at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the County to enforce any provision at any time in accordance with its terms.
- 2.2 **Nonconforming Terms and Conditions:** A proposal that includes terms and conditions that do not conform to the terms and conditions of this Request for Proposal is subject to rejection as non-responsive. Archuleta County reserves the right to permit the Contractor to withdraw nonconforming terms and conditions from its proposal prior to a determination by the County of non-responsiveness based on the submission of nonconforming terms and conditions.

## Article 3 Confidentiality

- 3.1 **Confidentiality:** All information disclosed by the County to the Contractor for the purpose of the work to be done or information that comes to the attention of the Contractor during the course of performing such work is to be kept strictly confidential.

## Article 4 Information

- 4.1 **Basic Qualifications:** In order to do business with the County, a Contractor must be able to demonstrate that it has:
  - The appropriate financial, insurance, material, licensing, certifications, equipment, facility and personnel resources, experience and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;
  - A satisfactory record of performance and integrity;
  - No unresolved negative issues with the Better Business Bureau;
  - The legal capacity to contract with the County;
  - Has already supplied, or upon request does supply, all necessary information needed to establish the above qualifications.

The County reserves the right to inspect the plant, place of business or worksite of the Contractor. The Contractor will supply an IRS W-9 (Taxpayer Identification Number and Certification) with their proposal. The unreasonable failure of a Contractor to promptly supply information in connection with an inquiry regarding basic qualifications may be grounds for a determination of non-responsibility. If a Contractor who otherwise would have been awarded a

contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the County and the non-responsible Contractor will be ineligible for the award.

## Article 5 Liability

- 5.1 **Force Majeure:** The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Contractor, unless otherwise specified in the contract.
- 5.2 **Indemnification:** Contractor shall defend, indemnify and save harmless Archuleta County, and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Contractor, or of any Contractor's agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from proposal award. Contractor shall pay any judgment with costs which may be obtained against the County growing out of such injury or damages.
- 5.3 **Patents/Copyrights:** The Contractor agrees to protect Archuleta County from any claims involving infringements of patents and/or copyrights. In no event shall the County be liable to a Contractor for any/all suits arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void any agreement resulting from response to this RFP.
- 5.4 **Remedies:** The Contractor and County agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

## Article 6 Government Requirements

- 6.1 **Conflict of Interest:** No public official and/or County employee shall have interest in any contract resulting from this RFP.
- 6.2 **Ethics:** The Contractor shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the County.
- 6.3 **Illegal Aliens:** The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this contract, The Contractor represents, warrants and agrees that it (i) has verified that it does not employ any illegal aliens through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and the Department of Homeland Security, or (ii) otherwise will comply with the requirements of CRS 8-17.5-102(b)(I), The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the County may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the County. If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall: Notify the subcontractor and the County within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

**6.4 Safety Information:** All chemicals, equipment and materials proposed and/or used in the performance of this purchase order must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

**6.5 Employment Discrimination:** During the performance of any services per agreement with the County, the Contractor, by submitting a Proposal, agrees to the following conditions:

- The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer.
- Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

**6.6 Campaign and Political Finance:** Sole Source: Colorado Constitution, Article XXVIII, Sections 2,13,15,16 and 17. The purchase described in this contract may be subject to the provisions of the aforementioned constitutional article and the following:

- This provision applies only to sole source government contracts and does not apply to any contract which used a public and competitive bidding process in which the County solicited at least three bids prior to awarding the contract, such as solicitations made through an electronic solicitation notification system. Contractor certifies, warrants, and agrees that it has complied and will comply with Colorado Constitution Article XXVIII, including but not necessarily limited to the following prohibitions and obligations:
- If during the term of the contract, contractor holds sole source government contracts with the State of Colorado and any of its political subdivisions cumulatively totaling more than \$100,000 in a calendar year, then for the duration of this contract and for two years after, contractor will not make, cause to be made, or induce by any means a contribution, directly or indirectly, on behalf of contractor or contractors immediate family member(s) for the benefit of any political party or for the benefit of any candidate for any elected office of the State or any of its political subdivisions; and
- Contractor represents that contractor has not previously made or caused to be made, and will not in the future make or cause to be made, any contribution intended to promote or influence the result of a ballot issue election related to the subject matter of this contract; and
- Contractor will satisfy contractors obligations to promptly report to the Colorado Department of Personnel & Administration information included in the Government Contract Summary and the Contract Holder Information, regarding this contract and any other sole source government contracts to which contractor is a party; and
- Contractor understands that any breach of this section or of Contractors responsibilities under Colorado Constitution Article XXVIII may result in either contractual or constitutionally mandated penalties and remedies; and

- A Contractor that intentionally violates Colorado Constitution Article XXVIII, Section 15 or 17(2), shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions for three years; and
- By performing pursuant to the contract, Contractor hereby affirms it is qualified and eligible under such provisions to enter into this contract.

## Article 7 Termination

**7.1 Contract Termination:** The County may terminate the performance of Work under the Contract Documents without cause and in the County's sole and absolute discretion. Such termination may be in whole, or from time to time in part. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor, specifying the extent to which performance of Work under the Contract is terminated and the date upon which termination becomes effective.

**7.2 Termination for Cause:** If Contractor fails to timely deliver the product(s) or to perform any of the service(s) contained in this Contract at the time specified herein or otherwise defaults in the performance of any of its obligations hereunder and the default continues for ten

(10) calendar days, or if Contractor becomes insolvent, a trustee or receiver of Contractor's business or assets is appointed, Contractor makes an assignment for the benefit of creditors, or a petition in bankruptcy is filed by or against Contractor, then in any such event, the County, at its sole and ultimate discretion, may cancel this Contract in whole or in part and any other agreement, order, confirmation, or terms of sale between the parties, by written notice to Contractor. The County shall have no liability or obligation whatsoever to Contractor by reason of or resulting from such cancellation. In addition to any other remedies available, the County may purchase similar product(s) or service(s) elsewhere in such manner as the County may deem appropriate. Contractor is liable to the County for any excess costs in procuring and purchasing the similar product(s) and/or service(s), plus any and all incidental and or consequential damages.

## Article 8 Performance

**8.1 Compliance with Laws:** Proposals must comply with all Federal, State, County and local laws governing or covering this type of service and the fulfillment of all ADA (Americans with Disabilities Act) requirements.

**8.2 Failure to Deliver:** In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the County, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any costs resulting in additional purchase and administrative services. This remedy shall be in addition to any other remedies that the County may have.

**8.3 Inspection and Acceptance:** Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements the County may exercise all of its rights, including those provided in the Uniform Commercial Code. In the case of services, the County reserves the right to inspect services provided under this contract at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to the contract requirements, the County may require the Contractor to perform the services again in conformity with the contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the County may (1) require the Contractor to take necessary action to ensure that the future performance conforms to the contract

requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the County in the termination provisions of the contract, or other remedies available at law.

- 8.4 **Quality:** The County will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.